COASTWISE TRADING OR FISHERIES PRIVILEGES

HEARING

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE

OF THE

COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

GRANTING OR RESTORING COASTWISE TRADING OR FISHERIES PRIVILEGES: H.R. 2024, GILBERT; H.R. 4490, FAIR TIDE; H.R. 4624, FREEDOM; H.R. 4625, OCEAN CYCLONE; H.R. 4627, PILGRIM; H.R. 4716, ENCORE; H.R. 4773, OCEAN TEMPEST; H.R. 4820, ALBERT; H.R. 4835, ALEUTIAN TRAWLER; H.R. 4836, PAVLOF; AND H.R. 4460, TO REMOVE UNNECESSARY RESTRICTIONS ON DOCUMENTATION OF CERTAIN VESSELS

JUNE 16, 1988

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CONTENTS

Text of:

Page
H.R. 2024 ... 27
H.R. 4460 ... 28
H.R. 4490 ... 29
H.R. 4624 ... 30
H.R. 4625 ... 31
H.R. 4627 ... 32
H.R. 4716 ... 33
H.R. 4773 ... 34
H.R. 4820 ... 35
H.R. 4835 ... 36
H.R. 4836 ... 37

Statement of:

Anderson, Hon. Glenn M., a U.S. Representative from California (H.R. 4627, *Pilgrim*) ... 21
Ballinger, Philip J., general manager, Pacific Fishermen, Inc. (H.R. 4625, *Ocean Cyclone*) ... 11
Biaggi, Hon. Mario, a U.S. Representative from New York ... 2
Bonker, Hon. Don, a U.S. Representative from Washington (H.R. 4835, *Aleutian Trawler*, and H.R. 4836, *Pavlof*) ... 3
Cummings, Stanley I., executive director, Orange County Marine Institute, Dana Point, CA (H.R. 4627, *Pilgrim*) ... 18
Davis, Hon. Robert W., a U.S. Representative from Michigan, and ranking minority member, Committee on Merchant Marine and Fisheries ... 4
Gaughan, John, Maritime Administrator, Department of Transportation (prepared statement) ... 123
Granger, Pete, American High Seas Fisheries Association (prepared statement on H.R. 4625, *Ocean Cyclone*) ... 131
Harper, James C., Esq., representing Canaveral Seafoods, Inc., Merritt Island, FL (on behalf of the *Gilbert*, H.R. 2024) ... 9
  Prepared statement ... 58
Ireland, Hon. Andy, a U.S. Representative from Florida (H.R. 4716, *Encore*) ... 15
Jones, Hon. Walter B., a U.S. Representative from North Carolina, and chairman, Subcommittee on Merchant Marine ... 2
Lent, Hon. Norman F., a U.S. Representative from New York, and ranking minority member, Subcommittee on Merchant Marine ... 3
Markey, Hon. Edward J., a U.S. Representative from Massachusetts (H.R. 4490, *Fair Tide*) ... 45
Miller, C. Donald, Jr., president, Miller Enterprises, Bradenton, FL (H.R. 4716, *Encore*) ... 15
Nelson, Hon. Bill, a U.S. Representative from Florida (H.R. 2024, *Gilbert*) ... 11
  Prepared statement ... 47
Packard, Hon. Ron, a U.S. Representative from California (H.R. 4627, *Pilgrim*) ... 44
Pagar, Gary S., president and chief executive officer, Tribeca Corp. (American Boat Charter & Builders, Inc.) (H.R. 4624, *Freedom*) ... 17
  Prepared statement ... 84
Park, Jack M., vice president, governmental relations, Crowley Maritime Corp. (H.R. 2024, *Gilbert* and H.R. 4460) ... 7
  Prepared statement ... 51
Roberts, Richard R., on behalf of South Seas Charter Service for Patricia A. and George William Bolling III, Marathon Key, FL (H.R. 4820, *Albert*) ... 24
  Prepared statement ... 115

Statement of—Continued

Page

Rudman, Gloria Cataneo, legislative director, Joint Maritime Congress (H.R. 4460) 5
Smith, George J., Lexington, MA (H.R. 4490, *Fair Tide*) 13
  Prepared statement 81
Walters, Capt. Julian, director of research and development, National Marine Engineers' Beneficial Association (H.R. 4460) 5
Yates, Charles E., Esq., Crystal Fisheries, Inc. (H.R. 4625, *Ocean Cyclone*) 11
  Prepared Statement 79
Young, Hon. Don, a U.S. Representative from Alaska (H.R. 4773, *Ocean Tempest*) 4

Additional material supplied:

Crowley Maritime Corp.: Answers to questions of Chairman Jones 56
Harper, James C.:
  Answers to questions of Chairman Jones 78
  Ocean dumping plan for Canaveral Seafood 64
  Scallop plant waste water disposal plan 77
Kruhly, Leslie Laird: NFAA 1986 Calendar of Events 96
Pagar, Gary S.:
  Article by Dennis Duggan, "Inner-City Kids Sail Toward Liberty" 95
  Sail for Liberty's Children Program 90
Roberts, Richard R.: Responses to questions of Chairman Jones 119
Steel, William W.: Survey reports of vessel *Pilgrim* 111

Communications submitted:

Alexander, A. (Florida Department of Environmental Regulation): Letter of January 31, 1986, to Diane S. Guthrie 73
Cannon, Lloyd (All Alaska Seafoods, Inc.): Letter of June 15, 1988, to Hon. Don Young (H.R. 4773, *Ocean Tempest*) 130
Cox, J. Alan (MacLean, Amato, Arlen & Anderson): Letter of December 2, 1985, to Larry Morgan 63
Cummings, Stanley L. (Orange County Marine Institute): Letter of June 23, 1988, to Hon. Walter B. Jones 98
DeFries, C.E. [NMEBA]: Letter of July 15, 1988, to Hon. Walter B. Jones with responses to questions 49
Dyer, Ellis, Joseph & Mills: Memorandum of February 1, 1988, concerning H.R. 2024, *Gilbert* 128
Franks, Capt. R.B. (Coast Guard): Letter of October 13, 1987, to Dr. Stanley Cummings with enclosure 100
Glas, Capt. George F. (National Party Boat Owners Alliance, Inc.): Letter of June 14, 1988, to Congressman Mario Biaggi (H.R. 4460) 133
Green, Hon. Bill (U.S. Representative from New York): Letter of June 2, 1988, to Hon. Walter B. Jones (H.R. 4624 *Freedom*) 46
Guthrie, Diane S. (attorney): Letter of February 6, 1986, to Edgar Griffis 72
Harper, James C. (James C. Harper & Associates): Letter of July 15, 1986, to Hon. Bill Nelson 74
Katz, Howard S. (CPA): Letter of May 27, 1988, to Gary Pagar 89
Kruhly, Leslie Laird (National Foundation for Advancement in the Arts): Letter of June 13, 1988, to House Committee on Merchant Marine and Fisheries 93
Larson, Comdr. Paul J. (Coast Guard): Letter of February 18, 1988, to David A. Russo 104
Majority and minority staff: Memorandum of June 10, 1988, to members, Subcommittee on Merchant Marine on coastwise trading and fisheries privileges 38
Mayberry, Capt. W.A. (Offshore Marine Service Association): Letter of June 14, 1988, to Hon. Mario Biaggi (H.R. 4460) 132
Miller, C. Donald, Jr.: Letter of July 26, 1988, to Subcommittee on Merchant Marine with responses to questions 114
Murray, James J. (AG&P Co.): Letter of March 1, 1986, to James C. Harper 70
Nelson, Hon. Bill (U.S. Representative from Florida): Letter of December 17, 1987, to Hon. Mario Biaggi (H.R. 2024, *Gilbert*) 48
Pagar, Gary S.: Letter of July 18, 1988, to Hon. Walter B. Jones with responses to questions 97
Smith, George J.: Letter of July 19, 1988, to Hon. Walter B. Jones with responses to questions 83
Steel, William W. (marine surveyor): Letter of October 7, 1985, to Orange County Marine Institute 108

Communications submitted—Continued

Page
Stocker, John J. (Shipbuilders Council of America): Letter of June 16, 1988, to Hon. Walter B. Jones (H.R. 2024, *Gilbert*).. 127
Varon, Joseph M. (crisis intervention teacher):
    Letter of April 15, 1988, to Congressman William Green......................... 92
    Letter of August, 1987, to Gary Pagar 94
Wilson, Dena L. (American Waterways Operators): Letter to Hon. Walter B. Jones dated June 20, 1988, on H.R. 2024, *Gilbert*..................................... 126

COASTWISE TRADING OR FISHERIES PRIVILEGES

THURSDAY, JUNE 16, 1988

House of Representatives,
Subcommittee on Merchant Marine,
Committee on Merchant Marine and Fisheries,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in room 1334, Longworth House Office Building, Hon. Walter B. Jones [Chairman of the Subcommittee] presiding.

Present: Representatives Jones, Anderson, Hubbard, Tallon, Pickett, Lent, Fields, and Coble.

Staff present: Subcommittee on Merchant Marine—Cynthia M. Wilkinson, Chief Counsel; Rudolph V. Cassani, Counsel; Ann M. Mueller, Clerk; Marlene Merchant-Bell, Staff Assistant; Kip Robinson, Minority Counsel.

Committee on Merchant Marine and Fisheries—Edmund B. Welch, Chief Counsel; Gerald Seifert, General Counsel for Maritime Affairs; Mark Aspinwall, Staff Assistant; Hugh N. (Rusty) Johnston, Jr., Minority Counsel; and Gwen Lockhart, Chief Minority Clerk.

STATEMENT OF HON. WALTER B. JONES, A U.S. REPRESENTATIVE FROM NORTH CAROLINA, AND CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

Mr. Jones. The Subcommittee will come to order, please.

At today's hearing we will consider testimony from Members of Congress and individual boat owners on private bills. These bills would permit entry into domestic commerce of vessels that suffer a disability under section 27 of the 1920 Merchant Marine Act. Also, I have introduced a bill that will grant or restore coastwise trading or fisheries privileges to a number of vessels that would not be eligible to engage in the coastwise or fisheries trades.

H.R. 4460 would amend section 27 of the Merchant Marine Act of 1920. That law provides that only a vessel built in the United States, and owned by a person who is a citizen of the United States may transport merchandise in the coastwise trade of the U.S. Section 27 also provides that a vessel that has acquired the right to engage in the coastwise trade and is later sold foreign—to an alien—or is placed under foreign registry may not engage in coastwise trade. When a particular vessel runs afoul of one or more of these statutory prohibitions, the Coast Guard will not otherwise issue a document granting coastwise trading or fisheries privileges.

Special legislation has been approved in the past when the owner proved there were extenuating circumstances, such as severe financial hardship. The Committee has also approved special legislation when the vessel or its operation was unique and the documentation for the commercial service or the fisheries was in the national interest.

H.R. 4460 would make unnecessary the kind of hearing we are having today for small vessels, those under 100 tons, where the only reason for their not being granted a coastwise document is that they were, after acquiring the right to engage in coastwise trade, "sold foreign." In the past, we have had the least difficulty providing a waiver for this narrow group of vessels. I believe enactment of this bill would both help clear our calender and eliminate a burden that at first blush does not serve a useful public purpose.

Mr. JONES. Do any Members care to make statements?

[No response.]

Mr. JONES. If not, I ask unanimous consent that the following may be placed in the hearing record: Statements by the following Members: Hon. Mario Biaggi, Hon. Norman F. Lent, Hon. Don Bonker, Hon. Robert W. Davis, Hon. Don Young, Hon. Edward W. Markey, Hon. Bill Green, Hon. Ron Packard, and Hon. Bill Nelson; and a statement by the Hon. John A. Gaughan, Administrator of the Maritime Administration.

Without objection, these statements are in the record. So ordered.

[Committee Members' statements follow; others can be found at the end of the hearing.]

STATEMENT BY HON. MARIO BIAGGI, A U.S. REPRESENTATIVE FROM NEW YORK, AND VICE CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, the Subcommittee hearing today is focused on granting or restoring coastwise trading or fisheries privileges to a number of vessels that would not otherwise be eligible to engage in these trades. We will also be considering legislation that will make a change in the basic structure of our cabotage laws. The change would allow small U.S.-built and U.S.-owned vessels—which had been sold to an alien or reflagged in a foreign country—to engage in our coastwise trade.

I have serious problems with H.R. 4460. This bill would amend the Jones Act to allow a vessel smaller than 100 gross tons, which is sold foreign or under foreign registry at some point, to engage in the coastwise trade. This is a major change to our longstanding and well-defined cabotage laws that I believe is unnecessary and undesirable.

Some will argue that applying restrictions to small vessels whose only disability is a break in the chain of title of U.S. citizen ownership serves none of the intended purposes of our cabotage laws. However, I'd like to point out that this prohibition was first enacted in 1797. That Act provided that a vessel registered under the laws of the United States that was thereafter seized or captured and condemned under authority of a foreign power—or sold to a foreigner—could not return to the coastwise trade.

A hundred years later this provision was repealed. However, there was a condition. The vessel could be sold foreign and subsequently returned to the domestic trade if it had not been enlarged or undergone change outside the United States. This was to protect U.S. shipyards.

The First Proviso of the Jones Act restored the prohibition contained in the 1797 Act. At the time the legislation was being considered, there were 174 U.S.-built vessels under foreign-flag and subject to repurchase or reregistration. Between 1921 and 1934, 172 U.S.-built vessels were renaturalized. In 1935, a Senate report stated that the vessels subject to repurchase were "of very little value except to cut into existing trade, demoralize established services, produce instability and disorder, and delay the building of ships in American yards where the employment would go to American labor." I believe the same justifications exist today.

We do not know how many vessels are out there that have been sold or registered foreign. We do not know whether this will encourage owners to register their vessels under a foreign flag, repair or rebuild them in a foreign yard, and return them to the coastwise trade. At any rate, there is potential for abuse and harm to small boatyards and our domestic commerce.

I also want to challenge the argument that individual consideration of these bills places a burden on the Congress. An examination of recently enacted legislation indicates that the chain of title defect problem is minuscule. For example, of the seven vessels we are considering today, only one would not be considered if H.R. 4460 were law. In the past three Congresses, the special legislation correcting chain of title problems involved a dozen vessels of less than 100 gross tons. A hearing once a year—and the work required to enact special legislation—is not a heavy burden on this Committee or the Congress.

The very essence of our cabotage laws is to reserve the domestic maritime shipbuilding and ship repair industries to U.S. citizens. Any relaxation of these laws should be approached with caution.

STATEMENT OF HON. NORMAN F. LENT, A U.S. REPRESENTATIVE FROM NEW YORK, AND RANKING MINORITY MEMBER, SUBCOMMITTEE ON MERCHANT MARINE

Mr. Chairman, I look forward to this hearing to learn more about the problems facing these various vessel owners and why they have come to the Congress to seek legislative relief from the various vessel documentation statutes.

I have often thought that it was unnecessary for us to go through this legislative process for the small vessels and, Mr. Chairman, I particularly look forward to hearing the testimony on the bill that you and I and Mr. Davis introduced (H.R. 4460). That bill is intended to eliminate the necessity for a lot of these special relief bills. I understand, however, that, as drafted, the bill may actually go further than we had intended and it may need to be redesigned. But, I do feel that it may be time for the Congress to reassess the need for these private bills when we are talking about the small pleasure craft that some individuals may want to use in commercial charter situations.

I do not have any specific comments on any of these other bills, but I do believe that when we are talking about a vessel that was not built in the United States that there should be some compelling reason to waive these legal provisions which require American-built vessels to be used in our domestic trade.

Mr. Chairman, I hope we can move quickly through this long list of witnesses so each vessel owner will have an opportunity to address their particular circumstances. Thank you, Mr. Chairman.

STATEMENT OF HON. DON BONKER, A U.S. REPRESENTATIVE FROM WASHINGTON

Mr. Chairman, this week I have introduced legislation which would grant coastwise privileges to the *Pavlof* (H.R. 4836) and the *Aleutian Trawler* (H.R. 4835), two catcher/processor vessels operated by Marine Management, Inc. of Seattle, Washington. I am bringing these bills to the attention of the Subcommittee because they involve issues identical to those raised by the bills under consideration at today's hearing. It is my intention to offer these bills as an amendment at the Subcommittee's markup of this legislation.

Both the *Pavlof* and the *Aleutian Trawler* were built in the United States. The *Pavlof* was built in Brooklyn, New York as a U.S. Navy Yard oiler, but was transferred to Panamanian registry and operated as a freighter in the 1970's. The *Aleutian Trawler* was built in Charleston, South Carolina, but was transferred to Norwegian registry shortly after World War II. Both vessels are U.S. documented, but because they were, at one time, under foreign registry, they have lost their coastwise trading privileges.

In the late 1970's and early 1980's, a group led by John Sjong bought the vessels and made substantial investments preparing them for service as catcher/processors. As a pioneer in the development of the North Pacific fisheries, Mr. Sjong and his partners' conversion and operation of these and other vessels have served as a model for the industry, and have been instrumental in the Americanization of U.S. fisheries. Marine Management, Inc. now operates a total of eight catcher/processors including the *Pavlof* and the *Aleutian Trawler*.

Although the *Pavlof* and the *Aleutian Trawler* have been in operation under U.S. flag for several years, they cannot reach their full potential without coastwise privileges. Therefore, I am offering this legislation to restore their coastwise privileges and thereby increase the productivity of the U.S. fishing fleet. I urge you to support these measures.

Thank you very much.

STATEMENT OF HON. ROBERT W. DAVIS, A U.S. REPRESENTATIVE FROM MICHIGAN AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, I want to commend you for placing these private bills before the Committee for a hearing. While many, if not all, appear on their face to warrant passage, it is only after the public notice and scrutiny that a hearing provides that we can be certain of the merits of each. Because all but one of these bills before us represent requests for special relief, we must be certain that the testimony given today is examined carefully and relief is, in fact, deserved. I particularly urge the witnesses to be candid and forthright in their presentation today.

With respect to H.R. 4460, I cosponsored this bill in order to eliminate the need for many of these requests for private relief before us today and to reduce our already crowded Committee agenda. But, Mr. Chairman, we must be particularly careful that the views of those affected, if any, are carefully heeded.

Thank you, Mr. Chairman.

STATEMENT BY HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. Chairman and Members of the Committee, I appreciate your including consideration of H.R. 4773 at the hearing today. This is a noncontroversial bill which will resolve an administrative problem affecting operation of the M/V *Ocean Tempest.*

The *Ocean Tempest* was constructed in a U.S. yard in 1945 for use in World War II. At the end of the war, it was placed in the Defense Reserve Fleet. In 1972, it was sold to a U.S. corporation which later sold it to the Storm Drilling Company of Texas for use in offshore oil exploration. At the time of this sale, the Maritime Administration placed a restriction on the vessel's documentation that would prohibit it from carrying certain cargo, including fish purchased from U.S. fishermen.

In 1987, the *Ocean Tempest* was sold again by the successor corporation of Storm Drilling to All Alaskan Seafoods in Kodiak, Alaska. All Alaskan Seafoods is a U.S. company, primarily owned by a group of fishermen from Kodiak. They purchased the *Ocean Tempest* to replace another vessel which had been destroyed earlier in 1987. Once it is completely outfitted and documentation restrictions are removed, the *Ocean Tempest* will employ over 200 people and is expected to purchase approximately $18 million a year worth of fish from U.S. fishermen. By allowing the *Ocean Tempest* to operate, we will be continuing our Committee's policy of developing fully the marine resources in our 200-mile zone. Further, we will be continuing the efforts we made when the Commercial Fishing Industry Vessel Anti-Reflagging Act was passed by the Committee last year.

I note that a companion bill (S. 2331) has been introduced by my colleague, Senator Ted Stevens. The bill has been reported by the Senate Commerce Committee without objection.

Again, Mr. Chairman, I want to stress that this is a U.S.-built vessel, owned by individuals who are American citizens, which will be serving the American fishing industry. The only thing standing in the way of its use is a minor administrative problem which can easily be corrected by this Committee. Mr. Chairman, I urge you to support passage of H.R. 4773. Thank you.

Mr. JONES. Letters have been received for the record from the Offshore Marine Service Association; All Alaskan Seafoods, Inc.; and American High Seas Fisheries Association.

[Letters can be found at end of hearing.]

Mr. JONES. We have a rather busy morning here on Capitol Hill. So I am going to ask, with all due respect to all concerned, that the witnesses, if you could digest your statements, I'd be very grateful so we can get out of here as soon as possible and go on to not better things but other things.

Captain Julian Walters, representing the National Marine Engineers' Beneficial Association.

STATEMENT OF CAPT. JULIAN WALTERS, DIRECTOR OF RESEARCH AND DEVELOPMENT, NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, REPRESENTING C.E. DeFRIES, PRESIDENT; ACCOMPANIED BY: GLORIA CATANEO RUDMAN, LEGISLATIVE DIRECTOR, JOINT MARITIME CONGRESS

Captain Walters. Good morning, Mr. Chairman.

My name is Julian Walters. I am Director of Research and Development for the National Marine Engineers' Beneficial Association. I am accompanied today by Gloria Rudman, the Legislative Director of Joint Maritime Congress.

Mr. Landgrebe, and most of our Union officials, are today at Frank Drozak's funeral. I am substituting for him.

Mr. Jones. I understand. All right.

Condense your statement as much as possible, please.

Captain Walters. Certainly. It is a very brief statement, Mr. Chairman.

Mr. Jones. The gentleman may proceed.

Captain Walters. It is only a couple of pages.

Mr. Chairman, we have carefully examined this bill and have, with regret, come to the conclusion that it is not in the interest of the U.S. maritime industry. I say "with regret" because we realize that this bill has been designed, in large part, to improve the efficiency of how the Congress considers Jones Act exemptions for smaller vessels. To be certain, if this bill is adopted, the U.S. Government, and especially the Congress, will be spared the often routine but time-consuming task of approving one-by-one these small vessel exemptions. Thus, on first impression, this bill appears to be a common-sense solution to streamline the process by which small, formerly Jones Act-qualified vessels re-enter our domestic trades. On further examination, however, this bill, as currently written, could present problems for our industry and maritime labor.

For example, many offshore oil rig supply and service vessels, of tonnage less than the 100 GRT mentioned in H.R. 4460, could be eligible to re-enter the domestic trades easily, often having been sold to foreign owners at bargain basement prices as a result of bankruptcy proceedings. These vessels would then be able to compete unfairly against the vessels of companies that did not go bankrupt and therefore have higher Jones Act-related capital costs.

This would be patently unfair, penalizing those who play by the rules. Indeed, it would penalize the very companies whose soundness and efficiency have enabled them to survive in some very tough economic times.

I am certain that such an effect is not intended by this bill, but its possibility could lead to driving the good companies out—which employ shipboard labor on a continuing basis—while leaving the field eventually to companies that milk the economy when times are good and which then disappear—with their jobs—when times are bad. That is not a formula for a stable, reliable workforce.

I believe we all agree that our merchant marine manpower problem is rapidly becoming so severe that no measure that might reduce the maritime jobs and skills available to our Nation should ever be approved.

A second potential problem concerns ship repairs. The 100-ton limit in this bill still takes in a lot of vessels, and these are no small vessels. Repairing these vessels is vital work to many small shipyards, preserving the skills and crafts so essential to defense. And, again, we all appreciate how rapidly this important shipyard base is dwindling. Why should we increase the problem? Yet that is what could happen. Under this legislation, vessels could have major repairs done abroad—in nearby Canada and Mexico—and then return without penalty.

A third problem concerns the 100-ton limit itself and the use of "gross registered tons." The truth is that GRT is an imaginary number. Vessels far larger can be designed—for example, with large double-bottomed tanks—to fit within this limit. Vessels could be altered abroad to beat the limit and then quickly changed once back under the U.S. flag—and there is no mechanism in the U.S. law to prevent it. Boats are designed today to beat GRT rules all over the world, and this practice would continue.

These are three problems we see with this bill as currently written. We are certain that others would surface after the bill was put into effect.

In view of these problems, we recommend that the Committee proceed no further with this legislation. Requiring each vessel to stand or fall on its own merits is an important check against the potential problems I have already covered. If it is still felt that approving these vessels on a case-by-case basis poses too great a workload, then perhaps the Committee might proceed with a more informal process of handling these requests; for example, making the bills available for public inspection and polling Members rather than holding formal hearings. But in view of the inherent dangers of this bill that we have outlined, the principle of individual vessel approval should, we believe, remain firmly in the hands of this Committee and the Congress.

If a change is absolutely imperative, then we recommend not the 100-GRT limit—or any GRT limit—which is open to abuse and to the problems I have outlined. Instead, we would ask that the Committee consider a "vessel-type" limit so as to exclude any vessel that could remotely be called "commercial." Thus, in place of a blanket change, we could focus on an exemption on yachts, sailboats, and other true pleasure craft that make up the bulk of the administrative workload this bill is trying to avoid. A bill with a more restricted application might solve 90 percent of the problem with none of the drawbacks of a more wide-ranging bill.

Again, Mr. Chairman, on behalf of President DeFries and all our members, I thank you for holding this hearing and giving us this opportunity to testify. I would be happy to answer any questions you or the Committee might have.

Mr. JONES. Thank you, Captain Walters.

I appreciate the fact that you oppose H.R. 4460, although I must admit my disappointment. You may recall, we withdrew the measure from consideration at the Subcommittee markup of the MARAD Authorization bill on May 18th so that you could have more time to come up with an alternative approach. I am heartened that you seem to be open to that course of action. I would hope that you begin discussion with my staff in the very near future to that end.

Captain WALTERS. We would be very happy to discuss it with the staff.

Mr. JONES. I have no questions.

Captain Walters, for the record we will submit some questions and ask you to respond to them at your convenience.

Captain WALTERS. I'd be very happy to.

[The questions and answers can be found at the end of the hearing.]

Mr. JONES. The next witness is Mr. Jack Park, Vice President of Governmental Relations at Crowley Maritime Corporation.

STATEMENT OF JACK M. PARK, VICE PRESIDENT, GOVERNMENTAL RELATIONS, CROWLEY MARITIME CORP.

Mr. PARK. Thank you, Mr. Chairman, and Members of the Committee.

Crowley Maritime Corporation owns approximately 350 tugs, barges, and other relatively small vessels for operation in the domestic trades. We perform towing, transportation, and ship assist work which ranges geographically from the open seas to harbors and rivers. We have, for example, large operations at Port Everglades, Jacksonville, and Miami. Our tugs range in size from 19 gross tons to 450 gross tons. Our barges range from 61 gross tons to almost 10,000 gross tons.

We oppose H.R. 2024 for the following reasons.

First: the legislation, when it was introduced, we believe, was not really necessary to make Canaveral Seafoods' operation legal. The *Gilbert* is towing barges from a point in the United States to offshore Florida, an operation which prior to June 7th, 1988 did not require the vessel to be documented.

As Congressman Nelson's letter of December 17, 1987 explained, the real purpose of H.R. 2024 was to take care of a Florida bank that holds a security interest in the vessel and which wants the vessel approved for coastwise trading to avoid problems in future transactions. If the First Proviso is to have any meaning, waivers should not be legislated for future transactions, the nature of which are unknown.

Second: the agent for Canaveral Seafoods, James Harper, in his letter to Congressman Nelson dated July 15, 1986 is quite candid that he had been made aware by the seller that the *Gilbert* and three barges, which Mr. Harper would propose to Canaveral Seafoods be purchased, had in 1977 been sold to a foreign corporation. Since I've written this, I've had the chance to read Mr. Harper's statement. He clarifies that point, and I certainly take no argument with it. But essentially, the nature of the foreign transaction was known. Mr. Harper took the appropriate step to check with the Coast Guard. They advised Mr. Harper that the sale did take place, and they could not redocument the vessel.

[Congressman Nelson's letter and Mr. Harper's letter can be found at the end of hearing.]

Mr. PARK. Third: it appears to us that the price paid for the three barges and the tug *Gilbert* was $105,000. In my statement I said $220,000. I got that from an earlier document. In Mr. Harper's statement he clarifies that. It was $105,000 which, I think, makes my point even better. That's a low price for vessels which have coastwise trading privileges.

We've reviewed recent sales listings for what appear to be comparable tugs and barges. We estimated that the value of the four units, we thought, was about $700,000. That's much higher than the $105,000 paid. This is a very important point. It is the price advantage gained by a purchaser of a vessel subject to the First Proviso when a legislative waiver is obtained that is the bone of contention.

Fourth: this is related to the previous point. It cannot be claimed that there would be no other suitable vessels available although Mr. Harper, in his statement today, makes that point. At the very worst from Canaveral Seafoods' point of view, new vessels could have been constructed. But aside from that alternative, we all are aware of the surplus of equipment that has been available from the many bankruptcies, company closings, and mergers in the last few years. Other tug-and-barge companies would almost certainly have been willing to bid to provide the service on a contract basis. Logic would indicate that the price paid for the *Gilbert* and the three barges—low to reflect the previous foreign sale—was the attraction and the reason why Canaveral Seafoods should not choose from other available qualified vessels.

Enactment of S. 1988 on June 7th of this year now presents different circumstances than those existing when H.R. 2024 was being formulated. Our interpretation of those circumstances is that, since that date, Canaveral Seafoods has been in violation of the law that mandates the carriage and towage of valueless material by vessels built and documented in the United States. Assuming we're correct, the Subcommittee may feel compelled to aid Canaveral Seafoods in the dilemma that they now face. If so, we would urge that the solution be a narrow one, not one that would permit the *Gilbert* and the barges to operate anywhere in the coastwise trade, so that the Florida bank won't have a problem selling them in the future.

Which leads to the matter of H.R. 4460, a bill to exempt vessels under 100 gross tons from the First Proviso of the Jones Act. We would oppose that primarily—I'm trying to summarize here quickly. Just let me say that I feel that the arguments made by the MEBA were correct. We'd be willing to work with the Committee—if you are interested in having us work with you—to come up with a reasonable solution. We think that some kind of language might be developed which would take care of those kind of nuisance bills that are introduced. If you wanted to stick with tonnage, we might think that a 20-gross-ton figure would be reasonable.

We point out that the industry is encouraging the Maritime Administration to sell to foreigners those vessels—many of which are small offshore and inland waterway vessels—repossessed because of bankruptcy. Once sold, we would not want them to be automatically eligible for redocumentation.

Whether the Crowley Maritime Corporation continues to be a viable corporation is certainly not going to depend on whether H.R. 2024 or H.R. 4460 is passed or not. We feel, however, that the First

Proviso to the Jones Act is a valuable law that should be enforced when to waive it imposes an adverse economic impact on operators who have adhered to the law. We oppose H.R. 2024 and H.R. 4460 in the interest of the tug-and-barge industry as a whole, especially the small operators who may be unaware of the bills or not capable of affecting the outcome of the legislation.

Thank you very much for providing me this opportunity.

[The prepared statement of Mr. Park can be found at the end of the hearing.]

Mr. TALLON (assuming chair). Mr. Park, thank you for your testimony.

We will be submitting questions for the record.

Mr. PARK. All right. I'll be pleased to answer them.

Mr. TALLON. Thank you.

[The questions and answers can be found at the end of hearing.]

Mr. TALLON. Now I would like to call the U.S.-Built Panel with Mr. James C. Harper, Canaveral Seafoods, Inc., and Mr. Charles E. Yates, Crystal Fisheries, Inc.

STATEMENT OF JAMES C. HARPER, ESQ., REPRESENTING CANAVERAL SEAFOODS, INC., MERRITT ISLAND, FL (ON BEHALF OF THE "GILBERT")

Mr. HARPER. Mr. Chairman, ladies, and gentlemen, I am James C. Harper. I am an attorney from Wilmington, North Carolina. At the time that the special legislation known as H.R. 2024 was introduced, I was working as a consultant for Canaveral Seafoods in Port Canaveral. I've been engaged with that corporation for about six years now establishing a method to dispose of wastes from the scallop plant at Port Canaveral.

I have submitted a memorandum. I do not intend to read it unless I am asked to.

I would rather briefly summarize the position of Canaveral Seafoods with regard to urging the passage of this legislation to issue a document and a limited certification of the MV *Gilbert*, a small 26-ton tugboat which is now at Port Canaveral and has been under the authority of a letter of U.S. Customs Carrier Ruling Branch of March of 1987 declaring its exemption from U.S. Code Title 46–316A.

I am aware of the legislation of June 7, 1988 which puts that tugboat in violation of the law. (P.L. 100–330)

We are here today to simply reiterate the fact that the scallop waste disposal program which was finally approved by the various departments and agencies in 1986 for Canaveral Seafoods to return to the sea those organic materials and water which were taken from the sea by way of a small tug and three small barges.

These barges and tugboat were purchased in late 1985. The proposal which is attached to our memorandum authored by me was actually modified to include the exact dimensions of the MV *Gilbert* and the three barges.

Mr. Park, I respect his position and his candor, alluded to the fact that the price paid for those vessels was comparatively small. I have no contention with that. The cost of renovating, refitting, repairing, and equipping those, however, was not comparatively small. The vessels were purchased in a poor state of repair. The barges required a major modification by way of the installation of diesel engines, pumps, and air ballast tanks to render them suitable for the purpose. The tugboat required a considerable amount of repair and upgrading.

The logistics of the Canaveral Seafoods operation in Port Canaveral constrain us to the use of small equipment. We have only approximately 200 feet-by-600 feet of wharfage, which includes the turning basin. The small barges and the tugs had worked together for the original owner for a period of 30 years or 40 years. They were mated to each other and had made up so many times that they were actually easy to adapt to this operation.

At the time this operation was devised—the time the plan was made and we did the research—there were no vessels available. We were aware of Crowley. We were aware of Port Canaveral Towing, Port Everglades Towing, and PetKim Corporation, which are all in Port Canaveral. There are large tugs available. According to Mr. Park, there are some small tugs available with Crowley.

The problem is simply that this tug and these barges are integral parts of the scallop processing plant. They work only when scallops are being harvested. They work only in good weather. Bad weather will force the suspension of the operations without notice. Scallops—it's in the record over the years—will suddenly leave, and there's no more fishing. In order to maintain a contract with a towing company, we feel that it would be next to impossible to make it economically feasible for either side because of the exigencies involved in the scallop operation, it being extremely seasonal and subject to the weather. The history is there.

The reason that Canaveral Seafoods is in this position now relates back to a problem of title which we feel we have explained in the memorandum.

We have indicated the economic impact of Canaveral Seafoods on the total seafood production industry in Port Canaveral. The figures are roughly $73 million in 1987, of which Canaveral Seafoods contributed $18.4 million. Canaveral Seafoods is the largest seafood processor in Port Canaveral, with a payroll of $1,868,000 in 1987. Of that, $862,000 went to the fishermen who harvest the scallops. Those are the facts relating to the history.

The reason why we're here is to ask for passage of H.R. 2024 to provide redocumentation and certification of the MV *Gilbert* for this limited purpose and no other.

I thank you. I'll be available for questions if there are any.

[The prepared statement of Mr. Harper and additional Questions and Answers may be found at the end of the hearing.]

Mr. TALLON. Mr. Harper, we thank you for your testimony. Your entire memorandum will be made part of the record. We don't have any questions.

Mr. TALLON. Excuse me, I see our Colleague, Bill Nelson, here. Bill, did you have anything you wanted to say?

STATEMENT OF HON. BILL NELSON, A U.S. REPRESENTATIVE FROM FLORIDA

Mr. NELSON. Mr. Chairman, thank you for the opportunity to appear personally. I wanted to do that and make a brief statement as to why I filed this legislation (H.R. 2024).

You've heard all the details from Mr. Harper in his testimony. Let me just point out that we are trying to get this tugboat redocumented because, basically, its documentation was lifted when it should not have been. Its documentation was lifted because there was an expectation of a foreign sale which did not go through.

The tugboat in question, the *Gilbert*, is used to take scallop waste to sea—we've got an environmental situation where at Port Canaveral we have a good bit of scallop processing. The shells of the scallops are left over. Environmentally, it's unacceptable that they continue to be dumped on land. So what they do is they take them out to the deep water on a barge and they dump them there. This has had the approval of the Federal and the State environmental people. The tugboat was purchased for that reason.

Before Canaveral Seafoods bought the *Gilbert*, at some point there was an anticipation that the previous owners were going to sell it to a foreign entity. Therefore, documentation on the tugboat was lifted. Even without the documentation, of course, everything still could have gone on until the Jones Act was recently signed into law.

I agreed to file this legislation on what appeared to be a series of technical considerations instead of some weighty matter of state that would take all of your time. I do appreciate the time of you and the Committee in the consideration of this matter. It seems to me that it's more of a technical nature and that the relief ought to be granted in this circumstance.

Mr. TALLON. Bill, thank you very much.

You've given us a good common-sense explanation of what you're trying to do. I appreciate it. I'm sure your constituent does to. Thank you.

Mr. NELSON. Thank you, Mr. Chairman.

[Mr. Nelson's prepared statement can be found at end of hearing.]

Mr. HARPER. Thank you, Mr. Chairman.

Mr. TALLON. Mr. Yates.

STATEMENT OF CHARLES E. YATES, ESQ., CRYSTAL FISHERIES, INC., ACCOMPANIED BY PHILIP J. BALLINGER, GENERAL MANAGER, PACIFIC FISHERMEN, INC. (ON BEHALF OF THE "OCEAN CYCLONE")

Mr. YATES. Thank you, Mr. Chairman.

I am Charles Yates. I am appearing here today on H.R. 4625. I am the owner of a company called Crystal Products, Inc., which has entered into a contract for the purchase of a vessel, the *Ocean Cyclone*.

The *Ocean Cyclone* is a vessel sold out of surplus by the United States Government in the past with the typical restriction imposed upon precluding its hauling cargo either for hire or proprietary. This bill is intended to lift that restriction so that this vessel can be utilized as a processing ship in the Alaskan and Eastern Pacific fisheries.

I have submitted a statement which I would ask to be incorporated into the record and will not attempt to read the whole statement.

Mr. TALLON. Sure. Without objection, your prepared statement will appear in the record.

Mr. YATES. I would like to also indicate that I have invited to sit with me, with the Committee's permission, Mr. Phil Ballinger. He is General Manager of Pacific Fishermen Shipyards in Seattle. This is a shipyard that is representative of a number of shipyards in the Northwest that service the type of catcher boats and which have a significant interest in a vessel like the *Ocean Cyclone* being introduced into the type fishery processing that we intend to enter it.

The reason why this bill is significant—I will not relist the economic impact of this vessel being introduced as a mothership because I think it's set forth in my statement. It's a significant impact both in terms of foreign trade deficit, employment, payroll, service acquisition, and utilization of shipyard facilities that are at the present time grossly underutilized in the Pacific Northwest.

But in addition to the economic impact, this vessel being introduced as a mothership poses the possibility that a group of fishermen who pioneered the harvesting of the bottomfish in the Gulf of Alaska, Bering Sea, and Eastern Pacific from being preempted from a future in that fishery.

What has happened is that these vessels pioneered the fishery by entering into joint venture with foreign nations wherein the fish were caught by U.S. vessels and delivered to foreign for processing. This started in 1978. Between 1978 and today these catcher boats have developed a capacity to deliver somewhere in excess of two million tons of fish annually.

They are at risk today of being eliminated from that fishery because, as U.S. processing capacity is being introduced, it is being introduced primarily in the form of vessels which do their own catching, thereby not requiring the use of this fleet of catcher boats that was developed for these joint-venture fisheries.

The actual intent of this bill is, as I've indicated, to correct an oversight of a previous owner of the vessel. As I've indicated, MARAD, in the sale of these vessels, imposes a restriction which precludes their use for hauling cargo. That has been interpreted to preclude the use of these vessels for moving fisheries products around, thereby precluding their use as a mothership.

Between 1980 and 1982, Congress authorized a blanket exemption from this. The vessel owners needed only to apply for the exemption. The previous vessel owners did not make this application. This bill is intended to correct that.

Additionally, for this vessel to operate efficiently, it must be able to take product from catcher boats in territorial seas and deliver it to a U.S. port. For that reason, we've asked for a limited exemption under the Jones Act.

Concluding—so that I don't take up too much of the Committee's time—this will be the first U.S.-built vessel dedicated exclusively to Alaskan bottomfish processing. There are other vessels that combine a little bottomfish processing with crab and salmon, but this is the first one dedicated exclusively to that. This is an experiment which, if successful, will, as I've indicated, provide a future stable market for a fleet of catcher boats that has developed in the Northwest over the last 10 years. For that reason, it is a significant bill beyond the economic impact of the actual introduction of the mothership itself. I would ask the favorable consideration of this Committee.

I'll be glad to answer any questions that the Committee may have regarding the matter.

[The prepared statement of Mr. Yates may be found at the end of the hearing.]

Mr. TALLON. Mr. Yates, thank you.

You've got prohibitions from MARAD, but also, isn't there a problem with the vessel being a foreign-flag vessel?

Mr. YATES. The vessel is U.S. built. It is presently foreign flag.

When it is reflagged U.S., it would, under the normal course, be precluded from participating in what's called coastwise trade. That would not normally be a problem because the vessel is intended to process fish. But there are limited periods of time through the year when the species that we are looking for are found inside the territorial waters, inside the three-mile limit. So we are looking for a limited exemption that will allow us to take delivery of what's a cod end of fish from these catcher boats within that three-mile limit, then process it, and deliver the processed product to the shore side.

At the present time, there is a Customs opinion which suggests that that may constitute coastwise trade which would be precluded because this vessel was, with MARAD's permission, reflagged foreign for a period of time. It will be reflagged U.S. It meets all of the criteria of the Anti-Reflagging Act which was adopted by Congress in January of this year.

Mr. TALLON. I think that those are all of my questions.

Mr. Lowry has, of course, a special interest in this. He will have questions for the record. Thank you very much, Mr. Yates.

Mr. YATES. Thank you.

Mr. TALLON. At this time, we would like to call Mr. George Smith, Mr. Gary Pagar, Dr. Stanley Cummings, C. Donald Miller, Jr., and Richard R. Roberts.

Gentlemen, your prepared statements will appear in the record. You might want to summarize your testimony.

Mr. Smith.

STATEMENT OF GEORGE J. SMITH, LEXINGTON, MA (ON BEHALF OF THE "FAIR TIDE")

Mr. SMITH. Mr. Chairman, and Members of the Committee, I appreciate your time constraints. I'll try to make my statement as short as possible and brief.

My name is George Smith. I'm a resident of Lexington, Massachusetts. In mid-1981, my wife, June, and I, after 10 years of sailing in New England, set out to purchase a charter sailboat. We came in contact with many people ready to sell us a boat and a promise of charter income. The search for the right vessel included visits to many yacht brokers and yacht management companies from

Boston to Florida. At no time during this process had I ever been informed of the provisions of the Jones Act concerning the operation of a foreign-built vessel. If I had been aware of these provisions, I would not have purchased the *Fair Tide* or any other foreign-built vessel. As a result of this process, which brought me here before the Committee, I have become familiar with the relevant provisions of the Jones Act. I understand its importance to the domestic shipbuilding trade and for the provisions in the Jones Act relating to unfair competition by foreign vessels. I do not believe that granting the *Fair Tide* an exemption from this provision would in any way undermine the importance of those goals.

After purchasing the *Fair Tide*, we were able to place the boat in a charter management in Fort Lauderdale, Florida that came highly recommended to us for the balance of its first winter. That spring my wife, June, and I inquired about placing the boat at the charter fishing boat dock in Nantucket. We were told by the dockmaster at the time that they only had three charter boats operating from the marina and all three were half-day fishing boats. No sailboats. Due to their lack of charter sailboats, we were told that the *Fair Tide* was more than welcome. Aside from the *Fair Tide*, they had only expected one other charter sailboat to operate that summer.

Not knowing exactly what the operation would be in Nantucket, we arranged two one-week bareboat charters for the *Fair Tide* upon its arrival that spring. The *Fair Tide*, on both occasions, came back with several hundred dollars in damages due to the charter party's inexperience with the vessel's operation. Following this, we thought it best to leave our Captain on board and have *Fair Tide* only charter on a scheduled basis.

As the summer progressed, we seemed to establish a reasonable amount of business. The *Fair Tide* was doing well, considering it was its first season. The expenses were high. Between mortgages, dockage, advertising, and maintenance, we made little, but felt confident that by adjusting rates and schedules, we could improve our business.

For the next four seasons, we operated *Fair Tide* from Slip 18 on Straight Wharf in Nantucket. Our bookings steadily increased along with our charter sales and, unfortunately, also our cost of operations. We have thoroughly enjoyed our *Fair Tide* charters and look forward to its possible continued operation and success.

It was not until January 1987 that I learned that *Fair Tide* was not operating correctly. Our insurance underwriters who had been insuring us as a charter boat for over five years would not renew our insurance due to her foreign hull. As soon as we learned of this problem, we ceased operation.

We entered into the charter business not knowing we would violate provisions of the Jones Act. Through this entire process, I would like to stress that no one informed us of a potential problem. If aware of such provisions in the use of foreign hulls, I would never have purchased this particular vessel. I wish to point out that a sizeable amount of the vessel is of U.S. manufacture, including its sails, mast, engine, rigging, instruments, and more.

The vessel has just completed a major amount of yardwork, including a new engine and sails, at a cost of over $15,000. During the past six years, I have additionally expended sizable sums on upkeep and charter operations. If forced to sell the *Fair Tide* and start over with another vessel, I face a substantial loss, in the order of $50,000. This would put me at a competitive disadvantage.

The *Fair Tide* has served a very useful role in Nantucket. I can say without hesitation that we have operated a reliable, safe, and truly professional chartering business with many return customers. Over the course of the four summer seasons, we served many thousands of guests, allowing them to share a very special and private view of the island not readily available to all. Subsequent to ceasing operations in 1986, additional sailing vessels have not attempted to operate in lieu of my absence. I do not believe if allowed to operate that the *Fair Tide* would represent unfair competition or undermine the true intentions of the Jones Act.

With this in mind, my family and I wish to thank you for the opportunity to present our situation here today. We ask you to please consider the approval of H.R. 4490 which will allow *Fair Tide* to obtain commercial documentation and perform coastwise trade. I wish to thank you very much, Mr. Chairman, and the Committee. I am able to answer any questions you may have.

[The prepared statement of Mr. Smith and additional questions and answers may be found at the end of the hearing.]

Mr. TALLON. Mr. Smith, thank you very much for your testimony. We have no questions now.

At this point, the Subcommittee would like to recognize Mr. C. Donald Miller for his testimony.

But first, I would like to yield to our good friend and colleague, Andy Ireland. Andy.

STATEMENT OF HON. ANDY IRELAND, A U.S. REPRESENTATIVE FROM FLORIDA

Mr. IRELAND. Thank you, Mr. Chairman.

I thank you and the Committee for giving me this opportunity to address the issues behind H.R. 4716 which affects the vessel *Encore* owned by my constituent, Mr. Don Miller. Mr. Miller is a very well respected citizen of my district, one who has found himself in a difficult position under this Act. I want to say that he and I both appreciate your indulgence. I look forward to his testimony and, again, thank the Subcommittee for their help and assistance.

Mr. TALLON. Mr. Ireland, thank you. I am sure your constituent appreciates your interest in helping him resolve this problem.

Mr. Miller, we'd be delighted to hear from you now.

STATEMENT OF C. DONALD MILLER, JR., PRESIDENT, MILLER ENTERPRISES, BRADENTON, FL (ON BEHALF OF THE "ENCORE")

Mr. MILLER. Thank you very much, Andy, Mr. Chairman, and Members of the Committee.

My name is Don Miller. I am a resident of Bradenton, Florida. Bradenton is located on the south side of Tampa Bay on the Gulf of Mexico, an ideal boating location. Boat- and water-oriented activities are extremely popular in our area.

In June of 1986, my brother, Dan Miller, and a friend, Jim Boast, and I purchased a 63-foot Bertram motoryacht, the *Encore*. We purchased this out of foreclosure from Goldome Savings and Loan Association. The boat was built in 1972, but had been fixed up very nicely with expenditures of over $500,000 by the previous owner. All this work was done in Bradenton, Florida. We had no opportunity to talk to the previous owner to learn the history of the boat since we bought it from a financial institution which had held it for one and a half years after foreclosure.

Our intent was to have the boat available for local charter in the Manatee County area where there are currently no boats of this nature available for charter. The charter of the boat would allow us to pay some of the expenses of maintaining such a nice vessel. We cannot afford this boat without the ability to have some charter revenue.

Bertram yachts have been considered some of the best built American boats of their size. It has always been our understanding that they were built in the Miami/Fort Lauderdale area for the Florida market. When we bought the *Encore*, we assumed it was likewise built in Florida. The equipment on the boat is American-made with Detroit diesels powering the vessel. We had no idea it was a foreign-made hull since it was a Bertram boat with Detroit diesel engines. Bertram boats are considered as American as Hatteras and Chris Craft are.

My understanding is that only a very limited number of Bertrams, the Bertram International series, are foreign hull. My understanding is that there were about 21 of these built. The Bertram International series was only built for a few year period from the late 1960's to the early 1970's. Because of the limited number of these boats that were built, we were not informed of the foreign hull construction. We naturally considered our Bertram an American-made vessel.

After purchasing the boat and in the process of having it documented, we found out that the vessel had a Japanese hull. It was at this time that we realized that we could not legally charter it in the Manatee County area. We do not feel we should be penalized for something we were not aware of during the purchase of what we believed was an American-made vessel.

We would be most appreciative of your making it possible for us to afford to continue to keep this boat with chartering for a Manatee County market. We appreciate your consideration of H.R. 4716.

Thank you very much. I will answer any questions if there are any.

Mr. TALLON. All right. Thank you, Mr. Miller.

At this time there are no questions. There may be some for the record. We appreciate your testimony very much.

[The questions and the answers can be found at the end of the hearing.]

Mr. TALLON. Mr. Gary S. Pagar.

STATEMENT OF GARY S. PAGAR, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF TRIBECA CORPORATION (AMERICAN BOAT CHARTER & BUILDERS, INC.), NEW YORK, NY (ON BEHALF OF THE "FREEDOM")

Mr. PAGAR. Good morning, Mr. Chairman, and Members of the Committee.

I have a brief statement and a short video to show you today. We are requesting that certain impediments be cleared for a vessel called the schooner *Freedom* so that it can be issued a certificate of documentation for employment in coastwise trade (H.R. 4624).

Freedom was originally built in Nova Scotia in 1969. It cost about $40,000 when it was purchased by my father in 1971. He registered and maintained it as a pleasure craft for many years, until his death in 1983.

I am requesting the changes not because I have an interest in engaging in commercial use with the eye towards making a profit, but rather because I founded a charitable program a few years ago where I have taken several thousand inner city school children sailing each Summer and provided them with a program. It is a nice program. A lot of kids get a lot of good things out of it.

We have business people and other people from the community come and talk to them about the importance of staying in school. In New York City, as you may well be aware, the drop-out rate is a real problem. Private citizens like myself have been getting more and more involved.

But we have a problem. The problem is that the cost of keeping a boat in New York has gone through the roof. It used to cost as low as $5,000, which in some cities may be expensive for dockage for a season. Now to dock a boat in New York is over $25,000. Just the pure operating expenses of maintaining a small vessel in New York approach $100,000 a year. It is very difficult to keep a boat going without the ability to augment the operating costs through some type of commercial activity. I would like to be able to engage in this commercial activity so that I can continue to maintain this type of program which I underwrite entirely myself. The ability to do so is based on getting our bill passed.

We, like some of the other boats, are substantially American rebuilt. This boat was originally built at a cost of less than $40,000. Since then, I have put close to one-quarter of a million dollars in capital improvements into this vessel and an additional half-a-million dollars of operating expenses during the last few years in which I have owned it.

Over 90 percent of this boat is now U.S.-built. If the intention of the law was to protect the shipbuilding industry in this country, then the spirit of the law has certainly been met in the case of the *Freedom* where so much of it is now U.S.-built. The original Canadian-built portion, although it represents about 40 percent of the total vessel, is largely planking which, by virtue of that aspect, covers a large amount of it.

I think the best reason for passage of H.R. 4624 is what the program means to the children. I'd like to take two minutes of the Committee's time to show you a brief video of what the kids experience when they are out on this trip because this is the real intention of this bill. If it weren't for this program, I would not be sitting here today and requesting this change.

[The Members of the Subcommittee viewed the video tape referred to by Mr. Pagar.]

Mr. PAGAR. I thank you for the opportunity to testify here today. I hope that you will give this the consideration that we think it deserves. If you have any questions, I'll be happy to answer them.

[The prepared statement of Mr. Pagar may be found at the end of the hearing.]

Mr. TALLON. Mr. Pagar, thank you.

I don't think we have any questions. We may have some for the record. It is certainly commendable what you are doing with these young people. Thank you very much.

[The questions and answers may be found at the end of the hearing.]

Mr. TALLON. Dr. Stanley I. Cummings.

STATEMENT OF STANLEY I. CUMMINGS, EXECUTIVE DIRECTOR, ORANGE COUNTY MARINE INSTITUTE, DANA POINT, CA (ON BEHALF OF THE "PILGRIM")

Dr. CUMMINGS. Chairman Tallon, and Members of the House Committee on Merchant Marine and Fisheries, I am Dr. Stanley Cummings, Executive Director of the Orange County Marine Institute, Orange County, California. I am here on behalf of the Orange County Marine Institute to speak in favor of H.R. 4627, a bill to provide relief for the vessel *Pilgrim* from certain maritime laws of the United States.

The bill is intended to allow the vessel *Pilgrim* to be documented as a vessel of the United States engaged in coastwise trade.

The *Pilgrim* is a full-scale replica of a vessel built in the shipyards of Medford, Massachusetts in 1825. The original *Pilgrim* was a merchantman engaged in a variety of trading missions until 1851 when she burned to the waterline in an unfortunate mishap off the North Carolina coast.

In 1834, she was owned by Bryant & Sturgis, a prominent eastern trading company, and sailed from Boston, Massachusetts, loaded with manufactured goods bound for the coast of California. For two years she frequented half-a-dozen ports from San Francisco to San Diego trading for bullock hides.

Her voyage would not have been particularly noteworthy were it not for a young seaman named Richard Henry Dana, who had left Harvard College in the hopes of improving his eyesight. Returning from this voyage, young Dana completed his studies and entered the professions as a lawyer. In 1842, a book appeared called "Two Years Before the Mast," chronicling Dana's voyage some six years earlier. The book became an instant success for it was the only narrative then available to provide an accurate description of the new land. It was much sought after during the gold rush years of 1848 to 1852 and is prized today for its historical description of the harsh life endured by the common seaman of the time.

Seamen's rights became a popular cause in the mid-1800's. Dana became a champion of the abused sailor, frequently taking on cases without remuneration and twice argued for passage of "sailor's rights" bills before Congress.

The replica *Pilgrim* was built in Denmark in 1945 and christened *Joel*. She was a double-ended, three-masted schooner engaged in the hay and grain trade until 1974 when she was purchased by one Captain Raymond Wallace of BJW Enterprises in California. She was taken to Portugal and rebuilt to resemble Richard Henry Dana's famous *Pilgrim*, a two-masted, square-rigged brig.

She was then sailed from Portugal, clearing Customs in Miami, before being taken through the Panama Canal bound for Monterey, California, where her owners intended to make her a featured attraction in a commercial development planned for the Cannery area. Financing for the project disappeared as the ship proceeded along the California coast. As she was participating in a historic reenactment of early hide-gathering days in newly-built Dana Point Harbor and near the old Mission San Juan Capistrano, word reached her captain and crew to proceed to a holding berth in the Port of Long Beach.

There she stayed, with infrequent attention to maintenance, until 1981 when officers of the Orange County Marine Institute met with owners and negotiated to have the vessel brought to Dana Point Harbor to test a dynamic new educational concept.

In 1982, a purchase agreement was signed by an associated foundation to insure the vessel would be permanently berthed in the Harbor. In 1985, the purchase agreement was taken over from the foundation by the Orange County Marine Institute.

The educational program which so attracted Marine Institute management was developed from a concept called "Living History," originally pioneered by the National Park Service and currently implemented in hundreds of locations throughout the United States. It involves staffing an historic location with people who role-play in the era in which the location was active and who encourage the visitors to experience that time as it was experienced by those who lived it. For young children especially, it is an exceptionally powerful tool for the teaching of history.

The replica *Pilgrim* is currently engaged in the re-creation of the sailing days of Richard Henry Dana to a young audience of 4th through 8th grade students, scouts, and other youth-serving groups. Approximately 12,000 youngsters have the opportunity for this experience each year, many of them cooking meals, attending to common shipboard tasks, and standing watch through long and lonely nights. The replica *Pilgrim* does not sail at these times but remains on her moorings in Dana Point Harbor. The replica *Pilgrim* does not now, nor will it in the future, sail with youngsters on board.

During the Summer, adult audiences are treated to shipboard performances of popular nautical musicals such as "Pirates of Penzance" and "H.M.S. Pinafore" and an occasional dramatic performance of Dana's "Two Years Before the Mast."

The replica *Pilgrim* is maintained to historically exacting specifications by a small professional staff supplemented by a dedicated group of some 50 volunteers. The Marine Institute has taken as its mission not only the preservation of a historically accurate artifact, but equally important, the preservation of the skills necessary to maintain and sail such a vessel. Accordingly, the volunteers are trained on a continuing basis in both skill areas and are tested each year when the replica *Pilgrim* is put to sea on the occasion of her annual haulout at a shipyard in Los Angeles.

In recent years, the Marine Institute has employed the occasion of this annual sail to dramatize to a wider audience a common maritime heritage shared by all Californians. The replica brig *Pilgrim* symbolizes that heritage just as the little galleon *Mayflower* symbolizes the birth of the New England States and the war frigate *Constitution* symbolizes a young nation coming of age. These ships are living reminders of our roots and of the values that shaped the present. They are part of the fabric which ties each of us to the other—past, present, and future—and into which is woven the secret to a better understanding of self and of one's place in the universe.

In 1988, the replica *Pilgrim* will sail to San Francisco. Beginning on September 11, accompanied by the official State Tallship *Californian,* she will retrace the historic route of the original *Pilgrim* along the coast to San Diego. In each port, local museums and historic societies are organizing a celebration of the ships' arrival and festivities to serve as reminders of those days of long ago. Upwards of one million visitors are expected to view the tallships at the combined festival sites. Three times that number are expected to read about the event or see portions of broadcasts on local TV stations.

While conducting educational programs in Dana Point Harbor, the replica *Pilgrim* has been declared "permanently moored" and "substantially a land structure" by the United States Coast Guard. At these times, she is under the jurisdiction of local officials and is inspected by County fire, health, and building and safety agencies. While at sea, however, the vessel is subject to Federal maritime laws.

At the time of her arrival in the United States, it was not her owner's intent to actually sail the vessel, and no provision was made to document or to otherwise license the *Pilgrim*. On September 11, 1987, the United States Coast Guard raised several issues which require resolution if the vessel is to continue to sail. At the core of these issues is the Merchant Marine Act of 1920, restricting coastwise trade to vessels built within the United States. The *Pilgrim,* being of Danish origin, is not eligible for licensing in the coastwise trade.

In communication with the United States Coast Guard, Commander R. B. Franks of the Marine Inspection Division, Long Beach office, opined "the most applicable provision to your situation would be that of special legislation by the Congress of the United States." Accordingly, the Orange County Marine Institute commissioned Mr. William E. Dysart of the law firm of Dale & Lloyd, La Jolla, California to research the issues and, subsequently, reached a conclusion similar to that of Commander Franks.

Marine Institute officials together with legal counsel contacted the office of Congressman Ron Packard to seek assistance in obtaining relief through private legislation.

In pursuing private legislation, it should be made clear that it is not the intent of the Marine Institute to compete with existing commercial activities. The replica *Pilgrim* is a museum ship and sails as a "living" exhibit to preserve ancient nautical skills and to educate a populace as to the importance of its maritime heritage. The Marine Institute categorically will not now or in the future enter the charter trade by seeking to have the vessel inspected.

Since the Marine Institute began operation of the replica *Pilgrim*, the vessel has been sailed annually only during repair yard visits which have been combined with special tallship events and special port visits. The vessel is manned by a crew comprised of volunteers and paid staff. Only crew and officers holding the licenses required by the United States Coast Guard will be used.

On occasion, those who have contributed to the Marine Institute are invited to sail on the replica *Pilgrim*. The United States Coast Guard has cautioned that those who may have paid some consideration, directly or indirectly, as contributors may be considered passengers under the law, whether or not they assist in the operation of the vessel. Likewise, the Marine Institute has been cautioned that the carrying of certain items such as souvenirs, brochures, and mementos of the replica *Pilgrim* may be carrying cargo even though owned by the Marine Institute and distributed without cost to visitors. The Marine Institute has been advised that there is some precedent for the Coast Guard's reasoning.

It is for these reasons that special exemption legislation is being sought. Under no circumstance will the replica *Pilgrim* carry persons that may be designated passengers in violation of the Federal vessel inspection laws and documentation laws.

The Committee's favorable consideration of H.R. 4627 is respectfully requested.

Thank you.

Mr. TALLON. Dr. Cummings, thank you very much for your testimony.

At this time the Chair would like to recognize Mr. Anderson for any statement he might have and/or questions.

STATEMENT OF HON. GLENN M. ANDERSON, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. ANDERSON. Thank you, Mr. Chairman.

I hate to interrupt here, but I'm on your side, I think.

Mr. TALLON. Thank you.

Mr. ANDERSON. Then we'll ask the questions afterwards.

Mr. Chairman, I would like to speak in support of H.R. 4627, a bill that would allow the Secretary of Transportation to issue a license to the vessel, *Pilgrim*, to operate along the entire California coast.

Being a lifelong resident of California, as well as the State's former Lieutenant Governor, the *Pilgrim* takes on special significance. The ship we will be focusing upon today is not the original *Pilgrim*. However, it is a replica of the original two-masted square rigger from which Richard Henry Dana discovered what is now Dana Point in southern California.

Mr. Chairman, the replica *Pilgrim* is currently engaged in a variety of educational missions, acquainting both young people and adults from the Orange County and Los Angeles area with the life of Richard Henry Dana and the significance of the original *Pilgrim*. However, because the vessel must essentially remain docked in Dana Point Harbor as a result of the law, many other people throughout the State do not have the chance to learn about Richard Henry Dana and the *Pilgrim*. By passing H.R. 4627, all Californians will have this worthwhile and unique opportunity.

Finally, I would just like to point out that the owners of the replica *Pilgrim* intend to do everything they can to ensure that the replica *Pilgrim* is operated safely in transiting up and down the California Coast, assuming we pass H.R. 4627. I know there have been some concerns raised about the vessel's structural integrity. I hope that those concerns can be worked out. I would ask my Colleagues to support H.R. 4627.

I thank you, Mr. Chairman.

Mr. TALLON. Mr. Anderson, thank you for your testimony.

Mr. ANDERSON. I have some questions.

Mr. TALLON. We'd like to recognize you at this time for any questions.

Mr. ANDERSON. Oh, good.

Incidently, I wasn't wasting my time. I was over at a leadership meeting with Chairman Jones.

Mr. TALLON. We understand. You're a very, very busy man. I'm sure Dr. Cummings appreciates you being here. Thank you.

Mr. ANDERSON. Dr. Cummings, my understanding is that the replica *Pilgrim* is a seaworthy vessel. Could you elaborate on this vessel?

Dr. CUMMINGS. Without going into the details of the efforts that have gone into it in terms of planks, and hull, and so forth, I would say every year, beginning in 1985, the vessel has been hauled each year to a shipyard in Long Beach for cleaning and inspection. In its last haul-out in 1987, it was inspected by Bill Steel, Marine Surveyors, a reputable firm in Long Beach. That survey is available for the record.

[The survey can be found at end of hearing.]

At that time, anticipating this meeting, I also asked the U.S. Coast Guard to examine the vessel to complete their files. That examination was done. I subsequently received a letter from Commander R. B. Franks of the U.S. Coast Guard, Long Beach Division, in which he details the results of the examination. In summary, he says this: "This is not to say the vessel is patently unsafe or unsuitable for private use but rather to report the standards to which vessels which engage in the carriage of passengers or sailing vessel school students can probably not be met by the *Pilgrim*. A conclusion to which you had probably already come to."

That is correct. We do not intend to have this vessel inspected for the carrying of passengers. But we feel that it is safe. I believe the survey and the results of the Coast Guard examination indicate for occasional, private use up and down the coast, it is a safe vessel.

Mr. ANDERSON. Dr. Cummings, if the replica *Pilgrim* is licensed in the coastwise trade, does the Orange County Marine Institute—that's the owners—intend to have the vessel inspected?

Dr. CUMMINGS. No. It has already been determined that, because of the vessel's age and original construction, it would be neither cost effective or practical to meet all of the requirements of the vessel inspection laws. Moreover, the vessel will not be used for the carrying of passengers or cargo, nor will passengers be sought, nor will cargo be carried.

Mr. ANDERSON. You almost know my questions. You've answered everything.

Dr. Cummings, my third question. If the vessel could not meet Coast Guard inspection requirements, why should it be allowed to be documented in the coastwise trade?

Dr. CUMMINGS. That's really the crux of why we're here.

Mr. ANDERSON. Yes.

Dr. CUMMINGS. On the surface it would appear, why bother, you don't need to be documented in coastwise trade. As noted above, the vessel will not seek passengers, nor will it seek cargo to be carried between ports in California. Federal maritime law states that a vessel carrying six or fewer passengers is not deemed a passenger-carrying vessel and, therefore, is uninspected.

Consequently, those persons who the Coast Guard may categorize as passengers, for example, contributors to the Institute, will in all cases never be allowed to exceed six in number. Therefore, the vessel would never require inspection as a matter of maritime navigation law. Indeed, the Institute is more than willing to commit itself irrevocably that it would never under any circumstances carry any person who may be classified as passengers in numbers greater than six.

Mr. ANDERSON. For my final question, how did the vessel operate in the United States up to now, since it was brought into the United States many years ago?

Dr. CUMMINGS. When the vessel was originally brought into the United States, it was done so for the purpose of being used as a fixed object. After the Institute acquired the vessel and commenced restoration, it became apparent that the vessel needed to be taken to appropriate repair facilities for hauling and repair. Moreover, as the vessel's restoration was completed, the desirability of the vessel visiting other ports in California to associate with California's nautical heritage became more important. More voyages were planned. Therefore, its status changed.

Although the United States Coast Guard has been most cooperative in allowing the vessel to sail on special occasions with excursion permits or similar permission, it has become clear that, in working with the Coast Guard and other governmental officials, such practices cannot continue under the present state of the law.

Mr. ANDERSON. Thank you, Dr. Cummings.

Thank you.

Mr. TALLON. Thank you.

Dr. Cummings, you mentioned a Coast Guard letter. Could we get a copy of that please for the record?

Dr. CUMMINGS. Yes.

Mr. TALLON. Thank you very much.

[The Coast Guard letter, dated October 13, 1987, may be found at the end of the hearing.]

Mr. TALLON. Any other questions?

[No response.]

Mr. TALLON. If not, I would now like to ask Mr. Richard R. Roberts for his testimony.

STATEMENT OF RICHARD R. ROBERTS, ON BEHALF OF SOUTH SEAS CHARTER SERVICE FOR PATRICIA A. AND GEORGE WILLIAM BOLLING III, MARATHON KEY, FL (ON BEHALF OF THE "ALBERT")

Mr. ROBERTS. Mr. Chairman and distinguished Members of the Subcommittee, my name is Richard R. Roberts. I appreciate the opportunity to appear before you today on behalf of Patricia A. Bolling and George William Bolling, III, the sole owners of South Seas Charter Services of Marathon Key, Florida in reference to their request to obtain documentation of the vessel, *Albert,* for use in coastwise trade as provided in H.R. 4820.

Unfortunately, neither of the Bollings were able to attend today's proceedings. They have asked me to present this testimony in their behalf.

In addition to my capacity as a General Partner in Roberts and Company here in Washington, I hold a United States Coast Guard license to operate vessels for hire in the inland waterways, Great Lakes, and western rivers, and captain a charter boat documented for coastwise trade.

Therefore, I am here representing the owners of the vessel *Albert*, as someone with experience in both the legislative process and the operation of charter vessels.

In the interest of time, I've submitted detailed, written testimony to the Subcommittee. I will merely make some brief remarks.

The vessel *Albert*, was built in Reykjavik, Iceland in 1956. It served as a sea rescue vessel in the Iceland Coast Guard. She was later sold into private service to an American corporation and received a U.S. Coast Guard certificate of registry as an inspected vessel for use as "Miscellaneous (Research Vessel)."

Prior to the Bollings purchasing her, the *Albert* was used as an oceanographic research vessel under the U.S. flag. The Bollings purchased the *Albert* on the assumption that, since she was a U.S.-flagged vessel, and as U.S. citizens themselves, they would be able to transfer the certificate of registry. They assumed that, upon refitting the *Albert* for charter work, they could continue to charter her to research firms to generate income while seeking prospective buyers.

Following the purchase, they retained a private documentation service who informed them that between 1979, when the certificate of registry was issued by the Coast Guard, and 1985, when the Bollings purchased the *Albert*, the category "Miscellaneous (Research Vessel)" had been eliminated. During this period, the Summer of 1985, Mr. Bolling was confined to bed with severe disc problems in his neck vertebrae that subsequently required surgery. With Mr. Bolling incapacitated and with some form of documentation essential, they decided to document the *Albert* as a pleasure yacht and try to get by on demise charters.

On Mr. Bolling's recovery, and with the refitting completed in U.S. yards, they decided to try to obtain coastwise trade status based on their experience in 1972 and 1973 in refitting, chartering, and selling the yacht *Puritan*. The *Puritan* had once been under foreign ownership and had subsequently lost its coastwise status. However, the Bollings were able to regain coastwise status through administrative procedures because the *Puritan* was an American bottom, built prior to the effective date of the amendments to the Act governing coastwise trade.

Having unwittingly been denied the vessel's original status in what may have been a naive and unsophisticated, but nevertheless good faith assumption, they hoped the distinction between a vessel built in the United States that lost coastwise status due to foreign ownership, and a vessel built in a foreign country and operated by U.S. citizens under restrictive status, would not preclude them from some relief.

The only option opened to them was to engage in demise charters, commonly known as "bareboat" charters. However, the vast majority of vessels engaged in demise charters are generally of a much smaller and infinitely simpler nature, generally in the 30′ to 60′ category, gross tonnage ranging from 5 tons to 60 tons, and easily handled by experienced amateur yachtsmen.

The *Albert*, at close to 120′ overall, and 200 gross tons, requires a skilled captain, an engineer, and a mate for safe operation. This left the Bollings with a severely limited market for charters and virtually eliminated the marketability of the *Albert* to prospective buyers. As a result, they have only been able to lease the vessel to a major motion picture studio for one week as a set for a movie, and as a pleasure diving vessel outside of U.S. waters for a four-month period.

Because of the restricted status of the vessel, they have only been able to generate revenues during 17 of the 136 weeks since the vessel was redocumented. That translates to deriving income only 12.5 percent of the time that they have owned the vessel.

To compound their financial hardship, the inability to engage in any revenue-generating enterprise other than limited demise charters makes the *Albert* undesirable to potential buyers. On several occasions, the Bollings have negotiated with a prospective buyer only to have the negotiations break off when the question of the commercial value of the vessel was raised.

The Bollings, unable to obtain adequate charters or to attract buyers, are faced with substantial hardship and simply seek the only relief available through the law.

The vessel, with its complete refitting, its hull reinforced for ice service, its history as a sea rescue vessel in Arctic and sub-Arctic waters, and its subsequent service as an oceanographic research vessel under the United States flag should provide full assurances that the *Albert* is eminently qualified to submit to U.S. Coast Guard inspection for limited passenger service.

Furthermore, with its stateroom capacity limiting it to 18 passengers, its overall design as a yacht, its low net tonnage which renders it unsuitable for cargo or fisheries trade, and the owners' clearly stated intent that it be used or sold for use in limited charter service, the Congress should be reassured that the *Albert* poses no threat or competition to our domestic maritime industry or to the trades servicing that industry.

The very nature of the vessel and the narrow language of the proposed legislation makes it obvious that their request will not result in any substantive change in existing law; continues to subject the vessel to all navigational, operational, and safety requirements; is revenue neutral; and has no inflationary effect. Should the Congress in its wisdom pass this legislation into law, neither the Nation nor its citizens will be subject to any Government expenditures, inflationary impact, or any other economic dislocations.

In summary, the owners of the *Albert* purchased, refitted in U.S. yards, and offered the *Albert* for sale in good faith. They were unaware of the intricate nature of documentation requirements. After having successfully resolved what appeared to them to be a similar problem with the *Puritan* many years before, they were chagrined and surprised to learn of the narrow technical differences between the construction and use of the two vessels. These differences left them with no choice but to seek a legislative remedy of which they had been totally unaware at the time of purchase. They merely ask that the Congress allow them to exercise their rights as provided in law to seek relief from economic hardship.

Any questions the Committee may have concerning this testimony or any additional information requested by the Committee will be provided to the best of my ability in the most timely fashion possible. On behalf of the Bollings and myself, I extend our thanks and appreciation to the Members of the Committee and their staff.

[The prepared statement of Mr. Roberts may be found at the end of the hearing.]

Mr. TALLON. Mr. Roberts, thank you for your testimony.

I have no questions. There may be some written questions for the record.

[The questions and answers may be found at the end of the hearing.]

Mr. TALLON. Do any Members of the Subcommittee have questions?

[No response.]

Mr. TALLON. If not, I want to thank all the witnesses for their testimony. This concludes our hearing.

Thank you very much.

[Whereupon, at 11:22 a.m., the Subcommittee was adjourned.]

[The following was received for the record:]

100TH CONGRESS
1ST SESSION

H. R. 2024

To clear certain impediments to the issuance of a certificate of documentation for a vessel for employment in the coastwise trade and fisheries of the United States.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 1987

Mr. NELSON of Florida introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To clear certain impediments to the issuance of a certificate of documentation for a vessel for employment in the coastwise trade and fisheries of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding sections 12105, 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for the vessel Gilbert, United States official number 230568.

○

100TH CONGRESS
2D SESSION

H. R. 4460

To remove unnecessary restrictions on the documentation of certain vessels, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 1988

Mr. JONES of North Carolina (for himself, Mr. DAVIS of Michigan, and Mr. LENT), introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To remove unnecessary restrictions on the documentation of certain vessels, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883) is amended by inserting "of 100 gross tons or more" after "no vessel".

○

V

100TH CONGRESS
2D SESSION

H. R. 4490

To permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Fair Tide.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1988

Mr. MARKEY introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Fair Tide.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12105 and 12106 of title 46, United States Code, and sections 27 and 27A of the Merchant Marine Act, 1920 (46 U.S.C. 883, 883–1), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for employment in the coastwise trade of the United States for the vessel Fair Tide, United States official number 644363.

○

V

100TH CONGRESS
2D SESSION

H. R. 4624

To clear certain impediments to the issuance of a certificate of documentation for a vessel for employment in the coastwise trade and fisheries of the United States.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1988

Mr. GREEN introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To clear certain impediments to the issuance of a certificate of documentation for a vessel for employment in the coastwise trade and fisheries of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding sections 12105, 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 U.S.C App. 883), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for the vessel Freedom, United States official number 569163.

○

100TH CONGRESS
2D SESSION

H. R. 4625

To issue a fisheries license for the operation of the vessel MV Ocean Cyclone.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1988

Mr. LOWRY of Washington introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To issue a fisheries license for the operation of the vessel MV Ocean Cyclone.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 508 and 510(g) of the Merchant Marine Act of 1936 (46 App. U.S.C. 1158, 1160(g)), section 27 of the Merchant Marine Act of 1920 (46 App. U.S.C 883), or United States Department of Transportation Contract No. MA–3915 and amendments thereto, the Secretary of Transportation is authorized to allow, and the Secretarty of the department in which the Coast Guard is operating may issue a fisheries license for the operaton of the vessel MV Ocean Cyclone (ex Coastal Spartan, official number 248959) to acquire, purchase, process, and transport fish and fish products in the fisheries of the United States: *Provided,* That if the vessel is scrapped, it shall not be scrapped other than in the domestic market without the prior approval of the Secretary of Transportation.

○

V

100TH CONGRESS
2D SESSION

H. R. 4627

For the relief of the vessel Pilgrim.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1988

Mr. PACKARD introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

For the relief of the vessel Pilgrim.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding—

(1) section 12106(a)(2) of title 46, United States Code; and

(2) the requirement specified in section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883) that a vessel be built in the United States to engage in the coastwise trade;

the Secretary of Transportation may issue to the vessel Pilgrim, owned by the Orange County Marine Institute, a coastwise license under section 12106(a) of title 46, United States Code, which authorizes such vessel to be employed in the coastwise trade.

○

V

100TH CONGRESS
2D SESSION

H. R. 4716

To permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Encore.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1988

Mr. IRELAND introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Encore.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12105 and 12106 of title 46, United States Code, and sections 27 and 27A of the Merchant Marine Act, 1920 (46 U.S.C. 883, 883-1), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for employment in the coastwise trade of the United States for the vessel Encore, United States official number 545162.

○

100TH CONGRESS
2D SESSION

H. R. 4773

To issue a fisheries license for the operation of the vessel M/V Ocean Tempest.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 1988

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To issue a fisheries license for the operation of the vessel M/V Ocean Tempest.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding section 508 and 510(g) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158 and 1160(g)), or United States Department of Transportation Contract Numbered MA-6772 (IFB PD-X-945), including any amendments, the Secretary of Transportation may authorize, and the Secretary of the department in which the Coast Guard is operating may issue, a fisheries license for the operation of the vessel M/V Ocean Tempest (ex Horseshoe Splice), United States official number 248773, to acquire, purchase, process, and transport fish and fish products in the fisheries of the United States. If the vessel is scrapped, it may not be scrapped other than in the domestic market without the prior approval of the Secretary of Transportation.

○

V

100TH CONGRESS
2D SESSION

H. R. 4820

To authorize the Secretary of Transportation to issue a certificate of documentation which authorizes the vessel Albert to engage in the coastwise trade.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1988

Mr. BORSKI introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To authorize the Secretary of Transportation to issue a certificate of documentation which authorizes the vessel Albert to engage in the coastwise trade.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding sections 12105, 12106, and 12107 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation which authorizes the vessel Albert (United States official number 605923) to engage in the coastwise trade.

○

V

100TH CONGRESS
2D SESSION

H. R. 4835

To permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Aleutian Trawler.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1988

Mr. BONKER introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Aleutian Trawler.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12105, 12106, 12107, and 12108 of title 46, United States Code, and sections 27 and 27A of the Merchant Marine Act, 1920 (46 U.S.C. 883, 883-1), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for employment in the coastwise trade of the United States for the vessel Aleutian Trawler, United States official number 236979.

○

V

100TH CONGRESS
2D SESSION

H. R. 4836

To permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Pavlof.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1988

Mr. BONKER introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To permit issuance of a certificate of documentation for employment in the coastwise trade of the United States for the vessel Pavlof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12105, 12106, 12107, and 12108 of title 46, United States Code, and sections 27 and 27A of the Merchant Marine Act, 1920 (46 U.S.C. 883, 883–1), the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation for employment in the coastwise trade of the United States for the vessel Pavlof, United States official number 597532.

○

ONE HUNDREDTH CONGRESS

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515-6230

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June 10, 1988

TO: MEMBERS, SUBCOMMITTEE ON MERCHANT MARINE

FROM: Majority and Minority Staff

SUBJECT: Coastwise Trading and Fisheries Privileges
(Thursday, June 16, 1988)

H.R. 2024 (GILBERT)
H.R. 4490 (FAIR TIDE)
H.R. 4624 (FREEDOM)
H.R. 4625 (OCEAN CYCLONE)
H.R. 4627 (PILGRIM)
H.R. 4716 (ENCORE)
H.R. 4773 (OCEAN TEMPEST)
H.R. 4460 (to remove unnecessary retrictions on the documentation of certain vessels
H.R. 4820 (ALBERT)

At 10:00 a.m. on Thursday, June 16, 1988, the Subcommittee on Merchant Marine will hold a hearing on legislation to grant or restore coastwise trading or fisheries privileges to a number of vessels that would not otherwise be eligible to engage in the coastwise or fisheries trade. The hearing will be held in Room 1334 Longworth House Office Building. Witnesses have been invited from the Maritime Administration (MARAD), Shipbuilders Council of America, and various interested parties.

Section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883) provides that only a vessel built in the United States, documented under the laws of the United States, and owned by a citizen of the United States may transport merchandise in the coastwise trade of the United States. It also provides that a vessel that has acquired the right to engage in the coastwise trade and is later sold foreign (to an alien) or is placed under foreign registry may not engage in the coastwise trade. In addition, chapter 121 of title 46, United States Code prohibits foreign-built, -owned, and -documented vessels from engaging in the U.S. coastwise trade. A U.S.-built vessel does not permanently lose its right to engage in the fisheries of the United States if it is sold to an alien or if it is placed under foreign registry. Chapter 121 of title 46, United States Code establishes requirements for the issuance of a fishery license and registry -- one of which is a requirement that the vessel be built in the United States.

When the facts surrounding any particular vessel involve one or more of these statutory prohibitions, the Coast Guard will not issue a document granting coastwise trading or fisheries privileges. A vessel may acquire these privileges through special legislation authorizing the Secretary of the department in which the Coast Guard is operating to issue the necessary documentation.

In the past, the Committee has approved special legislation when the owner proved there were extenuating circumstances, such as severe financial hardship. For example, a person may purchase a vessel or may spend considerable sums of money in U.S. shipyards to refurbish it, and only after spending the money does the owner learn that there is a defect in the chain of title or that the vessel is foreign-built, making it impossible to use the vessel in the intended trade. The Committee has also approved special legislation when the vessel or its operation was unique and documentation for commercial service or the fisheries was in the national interest.

The Administration consistently opposes any relaxation of the cabotage laws, absent some compelling reason. It feels that coastwise trading and fishing restrictions have been enacted to protect and foster United States maritime and shipyard industries and that any relaxation should be approached with caution. However, when the Congress has presented compelling reasons, the Administration has not opposed these special enactments.

The following is a brief resume of the vessels and the circumstances that necessitate legislation:

GILBERT (H.R. 2024)

H.R. 2024 was introduced by the Honorable Bill Nelson on April 8, 1987 to permit the GILBERT to engage in the coastwise trade.

The GILBERT, U.S. official number 230568 -- a tugboat of 38 gross tons and 54.7 feet in length -- was built in Baltimore, Maryland in 1931. The information that has been made available indicates that she is presently owned by Canaveral Seafoods, Inc., with Captain Edgar Griffis as the principal owner and operator. Griffis purchased the tug from Atlantic Gulf and Pacific Co., Inc. of Texas. Atlantic purchased the vessel from South Marine, Ltd., a foreign corporation (Liberian). South Marine had planned to use the vessel in the Middle East but did not because of hostilities. Canaveral claims that the sale was never consummated, that the vessel never left the United States, and that the tug was never documented in a foreign country or used by a foreign interest. This information cannot be corroborated. However, Coast Guard records indicate that the Maritime Administration approved a transfer to foreign ownership in 1975 and that the vessel's documents were surrendered on February 14, 1977. This, in effect, places a cloud on the vessel's title, and it cannot operate in the domestic coastwise trade.

The company is presently using the tug to move barges filled with liquid washwater and scallop viscera to an approved dumpsite offshore in lieu of dumping into the waters of Port Canaveral. Prior to June 7, 1988, the tug could engage in this trade. The owner wanted title cleared to improve the marketability of the tug should he decide to sell it. Now, Public Law 100-329, signed on June 7, 1988, requires tugs used to transport valueless material beyond the three-mile limit and within the Exclusive Economic Zone to meet all Jones Act requirements. The legislation is necessary, therefore, to exempt the tug from the prohibition against foreign ownership in the chain of title.

The bill may be opposed by towing vessel operators.

FAIR TIDE (H.R. 4490)

H.R. 4490 was introduced by the Honorable Edward J. Markey on April 28, 1988 to permit the FAIR TIDE to engage in the coastwise and fisheries trades.

The FAIR TIDE, U.S. official number 644363 -- a yacht of 16 gross tons and 43.6 feet in length -- was built in Taiwan in 1981. It is a Mason 43-foot cutter -- a fiberglass sailboat that holds up to six passengers.

The FAIR TIDE is owned by George Smith of Lexington, Massachusetts, who would like to use her to operate two-hour charter cruises, four times a day, seven days a week, off Nantucket Harbor and Sound. The vessel cannot operate in the domestic coastwise trade because it was not built in the United States. However, it appears that, for the past six years, the vessel has been operated in the day-charter sailboat business.

FREEDOM (H.R. 4624)

H.R. 4624 was introduced by the Honorable Bill Green on May 17, 1988 to permit the FREEDOM to engage in the coastwise and fisheries trades.

The FREEDOM, U.S. official number 569163 -- a wooden schooner of 35 gross tons and 49.8 feet in length -- was built in Canada in 1969. In 1976, it was documented as a pleasure vessel of the United States with a restriction against operating in the domestic coastwise trade because it was built in a foreign yard.

The present owner is American Boat Charter and Builders, Inc. of New York, which has been using the vessel (primarily in the New York City area) for pleasure and nonprofit sailing trips for disadvantaged children. Due to the high cost of maintaining the vessel, the company would like to engage in the carriage of up to 49 people on daylight voyages within New York Harbor. The owner states that the vessel was 60 percent rebuilt in Maine in 1983-1984. Since then, additional repairs have been made so that she is nearly 90 percent rebuilt in the United States.

If the vessel were permitted to engage in the domestic coastwise trade, she would still have to be inspected and certified by the Coast Guard. At this time, it is unknown whether she could comply with the inspection requirements for the trade intended.

OCEAN CYCLONE (H.R. 4625)

H.R. 4625 was introduced by the Honorable Mike Lowry on May 17, 1988 to permit the OCEAN CYCLONE to engage in the coastwise trade.

The OCEAN CYCLONE is of Panamanian registry (formerly, the COASTAL SPARTAN, U.S. official number 248959). She is an offshore drilling vessel of about 5,505 gross tons and 363.4 feet in length. She was built in Superior, Wisconsin in 1945 as a knot-class vessel, CI-M-AVI, for use in the war effort by the Maritime Administration. Following World War II, she was mothballed until sold in June 1965 to Boston Metals Co. pursuant to MARAD Contract No. M.A. 3915 (IFB PD-X-697). At the time of her sale, she was contractually prohibited from being used to transport passengers, cargo for hire, or proprietary cargo.

After being acquired by Boston Metals Co., the vessel was transferred to Storm Drilling Co. in February 1969 by Amendment No. 1 to the MARAD contract. In 1971, the vessel was converted into an offshore drilling vessel by Bethlehem Steel in its Beaumont, Texas shipyard.

The vessel apparently served as a drilling platform off the southern coast of the United States until approximately May 1975 when ownership was transferred to Japan Odeco S.A., a Panamanian corporation, pursuant to Amendment No. 2 to the MARAD contract. The vessel was then used as a drilling platform off the coast of Brazil until approximately 1985 when it was again mothballed.

In December 1987, Seafood Wholesales Inc., a California corporation, purchased the vessel from Japan Odeco. In February, 1988, Crystal Products Inc. (CPI) obtained a 120-day option to purchase the vessel from Seafood Wholesalers Inc.

CPI, if it obtains Congressional permission, intends to use the OCEAN CYCLONE as a U.S.-flag "mothership" processor in the Bering Sea and eastern Pacific. The vessel would employ an estimated 150 people annually and would use between four and eight U.S. trawlers to provide it with the raw fish products necessary to operate a processing plant.

This mothership would displace one or more foreign processors presently operating in the U.S. fishing zone. It is maintained that this vessel could reduce the U.S. foreign trade deficit -- either by decreasing the amount of foreign fish brought into the United States or by the sale of its products on the foreign market.

The vessel would require annual shipyard maintenance, which would be done in Seattle shipyards. The value of its conversion to a processor in a U.S. shipyard is estimated to be between $8 and $11 million.

This vessel cannot engage in the domestic coastwise trade as a fish processing vessel for two reasons: former ownership by a foreign company and a prior contractual restriction prohibiting its use or operation "as a means of transportation of passengers or cargo for hire, or as a means of transportation of proprietary cargo". MARAD has interpreted this restriction to preclude the use of the vessel in the United States fisheries as a fish processing vessel.

PILGRIM (H.R. 4627)

H.R. 4627 was introduced by the Honorable Ron Packard on May 17, 1988 to permit the PILGRIM to engage in the coastwise and fisheries trades.

The PILGRIM (no U.S. official number) is presently considered a shoreside structure. It is owned by the Orange County Marine Institute, Dana Point, California, and is primarily used for educational purposes. It is a replica of the original two-masted, square-rigged sailing vessel on which Richard H. Dana sailed prior to writing TWO YEARS BEFORE THE MAST. It was built in Portugal in 1945 and has a wooden hull from Denmark.

As part of the centennial of Orange County, the PILGRIM is scheduled to sail late in the Summer of 1988 to retrace the voyage of the original PILGRIM along the California coast. On several occasions, the Coast Guard has given the vessel an excursion permit to operate without passengers. The owners would like to use the vessel to carry not more than six passengers.

The PILGRIM is prohibited from operating in the domestic coastwise trade due to her foreign construction and requires legislative relief to operate as an uninspected small passenger vessel.

ENCORE (H.R. 4716)

H.R. 4716 was introduced by the Honorable Andy Ireland on May 26, 1988 to document the ENCORE in the coastwise trade.

The ENCORE, U.S. official number 545162 -- a pleasure vessel of 65 gross tons and 63 feet in length -- was built in Japan in 1971. She was originally numbered in the State of Florida (No. FL 4370 SF). On January 18, 1973, she was documented as a pleasure vessel of the United States, named the MI-MAR, and given U.S. official number 545162. On January 20, 1978, under MARAD Order No. 15371, she was permitted to be sold foreign. On February 7, 1978, her U.S. documentation was surrendered, and she was placed under Panamanian registry and flag. In 1980, she was again redocumented as a vessel of the United States and renamed the MY WAY and, subsequently, the ENCORE.

The present owner, C. Donald Miller, Jr., President of Miller Enterprises of Bradenton, Florida, wants to use the ENCORE for charter parties and, therefore, engage in the domestic coastwise trade. He states that the vessel was purchased from a savings and loan company and that he was unaware it had been built -- and sold -- foreign. He claims that since the vessel is a Bertram boat and they are manufactured in Miami, he assumed the ENCORE had been built in the United States.

OCEAN TEMPEST (H.R. 4773)

H.R. 4773 was introduced by the Honorable Don Young of Alaska on June , 1988 to permit the OCEAN TEMPEST to engage in the coastwise trade.

The OCEAN TEMPEST, U.S. official number 248773, an offshore oil drilling vessel of 5508 gross tons and 363.4 feet in length was built in Savannah, Georgia in 1945 as a knot-class vessel, CI-M-AVI, for use in the war effort by the Maritime Administration. At the end of World War II the vessel remained with the

Maritime Administration, and was placed in their serve fleet at Mobile, Alabama. In 1972, the vessel was sold to the Nicolai Joffe Corporation, and was to be scrapped within 2 years.

The vessel was not scrapped, however, and in 1974 the Nicolai Joffe Corporation sold the vessel to the Storm Drilling Company of Texas for use in offshore oil exploration. At this time the Maritime Administration placed a restriction on the vessel documentation stating that the vessel could not be used for the transport of passengers or cargo. The Storm Drilling Company renamed the vessel OCEAN TEMPEST, and used her as an offshore oil drilling vessel from 1974 to 1987.

The present owners, All Alaskan Seafoods, Incorporated, is an Alaskan corporation licensed to engage in the seafood industry of the North Pacific, Bering Sea and adjacent coastal waters. It is seeking a legislative waiver of the MARAD contract restrictions to allow the company to use the OCEAN TEMPEST, as a fish processor, as a replacement for the All Alaskan which went aground in March 1987.

All Alaskan Seafoods has outfitted the OCEAN TEMPEST with the latest seafood processing and refrigeration equipment, and plans to purchase king and tanner crab, bottomfish, and salmon from U.S. fishermen in the North Pacific and the Bering Sea. The OCEAN TEMPEST is expected to generate roughly $35 million annually in gross revenues, will employ 240 people onboard, and will purchase approximately 18 million dollars' worth of fish per year from U.S. fishermen.

The vessel cannot engage in the domestic coastwise trade as a fish processing vessel because of a prior contractual restriction prohibiting its use or operation "as a means of transportation of passengers or cargo for hire, or as a means of transportation of proprietary cargo". MARAD has interpreted this restriction to preclude the use of the vessel in the United States fisheries as a fish processing vessel.

H.R. 4460 -- REMOVE UNNECESSARY RESTRICTIONS ON THE DOCUMENTATION OF CERTAIN VESSELS

H.R. 4460 was introduced by the Honorable Walter B. Jones, Robert W. Davis, and Norman F. Lent on April 26, 1988 to remove a restriction on the documentation of certain small vessels.

Section 27 of the Merchant Marine Act, 1920 provides that when a vessel, eligible to engage in the coastwise trade, is sold to an alien or placed under foreign registry, she loses her coastwise trading privileges.

H.R. 4460 would allow a vessel smaller than 100 gross tons that was built in the United States and sold foreign to engage in the coastwise trade, provided that the ownership requirements of the Jones Act are met when the vessel comes back into the domestic coastwise trade.

The intent of the Jones Act and related coastwise statutes was to promote U.S. shipyards and oceangoing ship operating companies, as well as seafarers. Supporters of the measure argue that applying these restrictions to small U.S. vessels whose only disability is a past break in the chain of U.S. citizen ownership serves none of the law's intended purposes.

STAFF CONTACTS:
Majority: Cyndy Wilkinson/Rudy Cassani, x63500;
Mark Aspinwall, x56785
Minority: Kip Robinson/Rusty Johnston, x63492

cc: Members, Committee on Merchant Marine and Fisheries

June 15, 1988 9:29 AM (#323cb)

ALBERT (H.R. 4820)

H.R. 4820 was introduced by the Honorable Robert A. Borski on June 14, 1988 to permit the ALBERT to engage in the coastwise trade.

The ALBERT, U.S. official number 605923, a pleasure vessel of 188 gross tons and 111.8 feet in length, was built in Iceland in 1956. It is owned by South Sea Charter Service, a husband and wife partnership, George William Bolling, III and Patricia A. Bolling. The company is engaged in purchasing older vessels, refurbishing them, and then chartering or reselling the vessels. The vessel is based out of Marathon Key, Florida, but is presently in the Los Angeles/Long Beach, California area. The owners would like to use the ALBERT to carry passengers for hire. Since the vessel is over 100 gross tons, it must be inspected and certificated by the Coast Guard for the service intended. This might very well present a problem due to the vessel's inability to meet passenger/vessel standards. In addition, the cost for inspection and certification may be prohibitive if the vessel is brought into compliance.

The ALBERT is prohibited from operating in the domestic coastwise trade due to her foreign construction and requires legislative relief to obtain the privilege of engaging in the coastwise trade. Even if legislative relief were obtained, she would still have to be inspected and certificated by the Coast Guard to engage in the trade intended.

Statement of the Hon. Ron Packard, a U.S. Representative From California

Mr. Chairman, I want to thank the Subcommittee for holding this hearing today regarding H.R. 4627, legislation which would exempt the brig *Pilgrim* from the Merchant Marine Act of 1920. I appreciate the cooperation that you and your staff have provided in helping to resolve this matter. It is my hope that the Subcommittee will act favorably on this legislation as soon as possible.

Before I proceed further, I would like to recognize the presence of Stan Cummings. Mr. Cummings is the Executive Director of the Orange County Marine Institute, and will be testifying later.

As you know, the *Pilgrim* is owned by the Orange County Marine Institute. This ship is a historic replica of the original two-masted square rigger from which Richard Henry Dana first described the beautiful California coast. In particular, Dana described the breathtaking bluffs of the city which now bears his name, Dana Point, California.

The *Pilgrim* has primarily been used for educational and historical purposes since being purchased by the Institute. However, the vessel was built in Portugal with a wooden hull that was purchased in Denmark. It is for this reason that I have introduced legislation to exempt the *Pilgrim* from the Merchant Marine Act. It is my understanding that the Merchant Marine Act prohibits commercial ships with foreign-built hulls from sailing between U.S. ports. Unfortunately, this has made it very difficult for this ship to retrace the voyage of the original *Pilgrim*.

As a part of the Centennial of Orange County, the *Pilgrim* is scheduled to set sail later this summer to retrace the voyage of the original *Pilgrim* along the California coast. To allow this voyage and subsequent historical trips, I am requesting that this legislation pass the House as soon as possible.

While I know that some may be wary of exempting any ship from the Merchant Marine Act, I believe that the *Pilgrim* meets the necessary criteria for such exemption. It is my understanding that approximately one dozen similar historical ships have been granted an exemption over the last decade. I believe it is fitting and proper for the *Pilgrim* to be added to this group.

EDWARD J. MARKEY
7TH DISTRICT MASSACHUSETTS

COMMITTEES
ENERGY AND COMMERCE
CHAIRMAN
SUBCOMMITTEE ON
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FINANCE
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Statement of the Honorable Edward J. Markey
Before the Subcommittee on Merchant Marine
on H.R. 4490

June 16, 1988

Mr. Chairman, I appreciate the expeditious consideration of the bills before the Committee and thank you for the opportunity to speak in support of my bill, H.R. 4490.

H.R. 4490 would permit the issuance of documentation for the vessel Fair Tide for employment in coastwise trade. The Fair Tide is a Mason 43 Cutter which is owned by two of my constituents, George and June Smith of Lexington, Massachusetts. The Smith's have used the Fair Tide to operate a small charter business on Nantucket during the summer months since 1981. During the process of purchasing their boat, establishing their charter business, and obtaining insurance for the vessel, they were not informed of the need for any special documentation until January 1987.

Because the Fair Tide was built in Taiwan, it is prohibited by provisions of the Jones Act from being employed in coastwise trade. These provisions are intended to prevent unfair competition by cheap foreign-built vessels. I support this goal and appreciate the significance of any waiver of these provisions. In this instance, however, granting an exemption for the Fair Tide would not undermine this important aim.

The Smith's charter business is a small personalized venture. There is only one other charter sail boat which operates from the Smith's marina. Over the past few summers, there has been more charter business than both boats have been able to accommodate. Indeed, operation of the Fair Tide as a captained, chartered, cruise boat was welcomed by the dock master at the Smith's marina. When the Smith's ceased operation of their charter business after being informed of the need for documentation by their insurance company, there was ample opportunity for a competitor to move in and pick up the excess business. None attempted to do so.

Issuance of the necessary documentation will in no way adversely affect the U.S. shipbuilding industry or foster any unfair competitive advantage. Continued operation of the Fair Tide will permit many tourists to enjoy charter boat excursions that otherwise would be unavailable. Needed maintenance and repair of the boat will provide local interests with work and income. For those reasons, the Joint Maritime Congress has informed me it has no objections to the bill.

In light of these special circumstances, I urge the Committee to approve H.R. 4490, and permit the issuance of the necessary documentation for the Fair Tide. Thank you.

BILL GREEN
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

FIFTEENTH DISTRICT
NEW YORK

2 June, 1988

Dear Mr. Chairman:

This a follow-up to our conservation regarding H.R. 4624 - to clear certain impediments to the issuance of a certificate of documentation to the Schooner Freedom for employment in the coastwise trade and fisheries of the United States.

I greatly appreciate the Committee holding hearings on this bill on June 16th and hope you will give this legislation every consideration.

Sincerely,

Bill

Bill Green
Member of Congress

BG:dh

The Honorable Walter B. Jones
Chairman
Committee on Merchant Marine
and Fisheries
1334 Longworth House Office Building
Washington, D.C. 20515

STATEMENT OF HON. BILL NELSON, A U.S. REPRESENTATIVE FROM FLORIDA

Mr. Chairman: Thank you for the opportunity to appear before you today to express my support of H.R. 2024, to authorize redocumentation of the tugboat *Gilbert*.

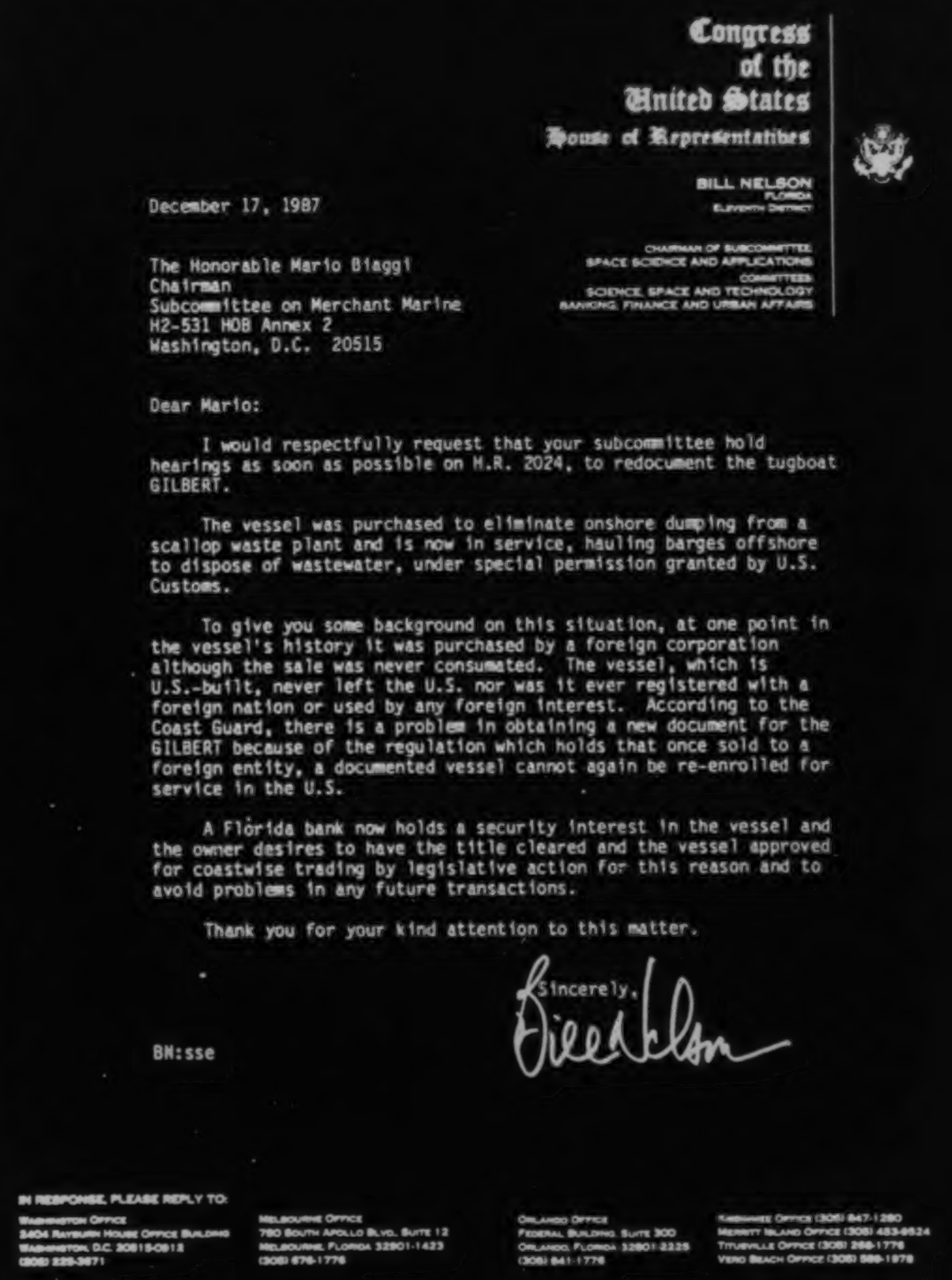
I introduced this legislation last year after considerable casework efforts to resolve this problem administratively. Mr. James Harper, representing Canaveral Seafoods, Inc., will testify before your Subcommittee this morning with the full details on the history of this vessel and the action taken with the Coast Guard and Customs since the tugboat was obtained.

It is my understanding that the *Gilbert* was purchased to eliminate onshore dumping of waste water and organic remnants from Canaveral Seafoods' scallop plant by hauling barges offshore for disposal. The tugboat was built in the United States and has not left the country. Although an earlier sale to a foreign entity was intended, and the documentation lifted in preparation for that transaction, the transfer was never consummated. *Gilbert* has never been registered in a foreign nation, nor has it been used by any foreign interest.

Therefore, it is necessary to redocument the vessel to allow for its lawful operation in coastwise trading.

I believe that, after your Subcommittee hears the specific facts of this matter later today, you will agree that the redocumentation is justified.

Thank you for your consideration of this request.



Congress
of the
United States
House of Representatives

BILL NELSON
FLORIDA
ELEVENTH DISTRICT

CHAIRMAN OF SUBCOMMITTEE
SPACE SCIENCE AND APPLICATIONS
COMMITTEES:
SCIENCE, SPACE AND TECHNOLOGY
BANKING, FINANCE AND URBAN AFFAIRS

December 17, 1987

The Honorable Mario Biaggi
Chairman
Subcommittee on Merchant Marine
H2-531 HOB Annex 2
Washington, D.C. 20515

Dear Mario:

I would respectfully request that your subcommittee hold hearings as soon as possible on H.R. 2024, to redocument the tugboat GILBERT.

The vessel was purchased to eliminate onshore dumping from a scallop waste plant and is now in service, hauling barges offshore to dispose of wastewater, under special permission granted by U.S. Customs.

To give you some background on this situation, at one point in the vessel's history it was purchased by a foreign corporation although the sale was never consumated. The vessel, which is U.S.-built, never left the U.S. nor was it ever registered with a foreign nation or used by any foreign interest. According to the Coast Guard, there is a problem in obtaining a new document for the GILBERT because of the regulation which holds that once sold to a foreign entity, a documented vessel cannot again be re-enrolled for service in the U.S.

A Florida bank now holds a security interest in the vessel and the owner desires to have the title cleared and the vessel approved for coastwise trading by legislative action for this reason and to avoid problems in any future transactions.

Thank you for your kind attention to this matter.

Sincerely,

Bill Nelson

BN:sse

IN RESPONSE, PLEASE REPLY TO:

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July 15, 1988

The Honorable Walter B. Jones
Chairman
Committee on Merchant Marine
  & Fisheries
1334 Longworth Building
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your July 11th letter transmitting questions to be submitted for the record as regards H.R. 4460, legislation that would grant or restore coastwise trading or fisheries privileges to formerly Jones Act qualified vessels.

I am pleased to respond to the three questions submitted for the record, and they are attached. However, I understand that after meeting with our representatives and other interested parties earlier this month, the consensus was that there was little or no support to modify the documentation laws in any form and that the legislation has been effectively retracted. If this is not the case, I would appreciate if your staff would get in touch with Gloria Rudman in order to clarify the status of the legislation.

Once again, let me thank you for giving MEBA the opportunity to express our views.

With best personal regards, I remain

Sincerely,
C. E. DeFries
C.E. DeFries
President

CED/kmb

Enclosures

C. E. DeFRIES
President

C. E. DODSON
Secretary-Treasurer

R. T. McKAY
Executive Vice President

A. P. SASSO
Vice President

M. H. PELFREY
Vice President

1. Do you have any suggestions for amending H.R. 4660 so that it will be acceptable to organized maritime labor?

In our testimony of June 16, 1988, we outlined several reasons why we believed the Committee should not proceed any further with H.R. 4460. If a change was needed due to the administrative workload this bill is trying to avoid, then we recommended not a 100 GRT limit -- or any GRT limit, which is open to abuse and to other problems. Instead, we suggested that the Committee consider a "vessel-type" limit so as to exclude any vessel that operates in the traditional commercial sense, such as tugboats, crew boats, offshore supply boats, and the like.

Since the date of the hearing, we have been advised that vessels of the type that make up the bulk of the workload that H.R. 4460 is trying to avoid are very few in number -- making this legislation, we believe, in effect, unnecessary. Moreover, there are a whole host of domestic small craft owners who could be adversely impacted if H.R. 4460 was enacted, such as river boat operators, excursion boat operators, and dinner cruise boat operators. These additional facts make even more compelling our belief that H.R. 4460 is not a prudent exemption to our coastwise laws.

2. Would you support this legislation if a provision were added that limited their use to commercial operations involving the carriage of not more than six passengers?

One of the problems with the 100-ton limit is the application of "gross registered tons" itself. Vessels far larger can be designed to fit within this limit. Stipulating that the vessels be limited to the carriage of not more than six passengers would not satisfy our concerns. There are simply too many inherent dangers in tampering with the documentation laws to run the risk of someone figuring out a way to circumvent the law.

3. Would you support this legislation if we could assure that all major repairs were conducted in U.S. shipyards?

If there is one potential problem with H.R. 4460, its effect on U.S. shipbuilding and repair industry is most apparent. The 100-ton limit in H.R. 4460 takes in a lot of vessels of all sizes and description. Repairing these vessels is vital work to many small shipyards, preserving the skills so essential to national defense. To assure that all major repairs were conducted in U.S. shipyards after the reflagging authority is allowed would not preclude the owners of formerly qualified vessels from having major repairs done in nearby Canada, Mexico or the Bahamas before applying for redocumentation with the Coast Guard.

PREPARED STATEMENT OF JACK M. PARK, VICE PRESIDENT, GOVERNMENTAL RELATIONS, CROWLEY MARITIME CORPORATION, BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE, JUNE 16, 1988

Mr. Chairman: My name is Jack M. Park. I'm the Vice President, Governmental Relations for Crowley Maritime Corporation.

Crowley Maritime Corporation respectfully submits this statement concerning H.R. 2024 and H.R. 4460 for the consideration by the House Subcommittee on Merchant Marine.

Crowley Maritime Corporation operates approximately 350 tugs, barges, small passenger vessels, derrick barges, and pollution control vessels in the domestic trades. We perform towing, transportation and ship assist work which ranges geographically from the open-seas to harbors and rivers. Our vessels which operate in the domestic trades range in size from 19 gross tons to 450 gross tons.

H.R. 2024 would allow the Secretary of Transportation to issue a certificate of documentation for the tug GILBERT, thereby permitting that vessel to engage in the coastwise trade.

Crowley Maritime Corporation opposes H.R. 2024.

As we understand it, the GILBERT is one of four vessels which Canaveral Seafoods, Inc. (Canaveral) purchased from Atlantic Gulf and Pacific Company, Inc., and which had been previously sold in 1975 by Atlantic Gulf and Pacific Company, Inc. to South Marine, Limited, a foreign corporation. Canaveral believes that the sale was aborted (which it may have been), however, the Coast Guard has had on file since 1977 approved Maritime Administration transfer orders and signed and acknowledged bills of sale.

Canaveral, although aware of the sold foreign transaction in 1975, purchased the four vessels at what we believe is a low cost,(reflecting their inability to engage in the coastwise trade) at some date subsequent to September 1985. Over the next several months they exchanged correspondence with the Coast Guard seeking appropriate documentation so that the vessels could be employed to transport scallop viscera and plant wastewater offshore Florida for dumping. The Coast Guard Regional Documentation Office, Miami, on June 25, 1986, advised the agent for Canaveral that the GILBERT lost its right to engage in the coastwise trade. It appears that that decision was subsequently reviewed and confirmed. In a letter dated August 29, 1986, the Acting Commandant of the Coast Guard wrote to Congressman Nelson, cited 46 App. U.S.C. 316 as amended in P.L. 99-307, and stated that "any towing vessel, other than a vessel towing a vessel in distress, must be documented with a coastwise or Great Lakes endorsement." He also expressed the opinion that "the barges would not be carrying merchandise within the meaning of 46 App., U.S.C. 883, and would not require documentation." We do not believe that the statement regarding the tug was applicable to the GILBERT since it appears the tug was operating from a point in the U.S. to an area offshore, a situation not requiring, at that time, that the vessel be documented. With the enactment of S. 1988 on June 7, 1988 documentation of the tug would be required for such an operation.

It is not clear from the records available to us when Canaveral Seafoods commenced employment of these four vessels, but it is evident that they are being employed at the present time and have been since at least December 1987. Congressman Nelson in a letter to Congressman Biaggi dated December 17, 1987 explains that the tug GILBERT "...is now in service, hauling barges offshore to dispose of wastewater, under special permission granted by U.S. Customs." The other three vessels (barges) which were acquired with the tugs, could operate without documentation (at least until a few days ago, when S. 1988 became law) because they transported valueless material.

We have discussed Congressman Nelson's statement with an official of Customs who investigated briefly to determine if Customs had granted special permission for the tug GILBERT to haul barges offshore and determined they had not (nor do they have the authority to do so). He believes that Customs may have advised Canaveral that a tug operating from a point in the United States to an area offshore need not be documented, a situation which has changed with the enactment of S. 1988.

Canaveral has invested $370,000 in the four vessels including acquisition, refitting and refurbishing.

As the Committee knows, the first proviso of Section 27 of the Merchant Marine Act of 1920 states:

> "Provided, That no vessel having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade."

I'm sure that you and the Committee and personal staffs are informed as to the background on this proviso, but for those who may read this testimony and are not so well informed, there is attached a legal brief on the subject.

Congress has justifiably in the past legislated exceptions to the law on a case-by-case basis.

We believe that this case does not justify an exception. This case is different from the typical appeal of an individual who wishes to use a small yacht for fishing charters or tours, who clearly has run afoul of a law which from his perspective is obscure, and for which relief will cause minimal or no economic adverse impact on anyone.

In this case Canaveral Seafoods hired a marine surveyor who allegedly made an extensive search for appropriate equipment, found them four vessels, and was made aware of their prior sale to a foreign corporation. The price paid for the four vessels was, if we understand correctly the documents made available to us, $220,000. That was a very advantageous price, for we estimate that similar vessels of that size would cost about $700,000. Certainly, it cannot be said there were no alternatives; this was a time when bankruptcys were rampant in the tug and barge industry and MarAd was repossessing vessels with Title XI guarantees. I'm sure an American shipyard would have been pleased to have built new vessels.

H.R. 2024 as currently before the Subcommittee would not permit Canaveral to continue its practice of discharging valueless wastes offshore because the recently enacted S. 1988 would, we believe, preclude its barges from carrying the waste products, and the tug from towing the barges. It may be possible to draft legislation acceptable to the industry dealing with the particular situation in which Canaveral finds itself. We object, however, to a blanket waiver of the first proviso to the Jones Act for the GILBERT or the barges that would permit them to operate anywhere in the coastwise trade. The first proviso to the Jones Act was enacted to prevent U.S.-flag vessels from moving in and out of foreign registry to the detriment of U.S. shipbuilders and U.S.-flag domestic operators, and a line has to be drawn somewhere if that law is to be retained and enforced. We suggest that line should be drawn to preclude redocumentation of the tug GILBERT.

It is significant to note that Congressman Nelson, in his letter to Congressman Biaggi, believing that the GILBERT was operating under special permission granted by U.S. Customs, justified the need for H.R. 2024 on the basis that "a Florida bank now holds a security interest in the vessel and the owner desires to have the title cleared and the vessel approved for coastwise trading by legislative action for this reason and to avoid problems in any future transactions." If the Committee visualized that H.R. 2024 was intended to assist an innocent and naive small vessel operator they would have been mistaken. Admittedly, the enactment of S. 1988 makes that a moot point.

Which leads us to the matter of H.R. 4460, a bill to exempt vessels under 100 tons from the Jones Act. We can understand why the Committee might wish to avoid an unreasonable imposition on citizens caught innocently in the web of seeming inextricable circumstances, as well as to reduce the administrative costs to the executive and legislative branches to resolve the problems associated with the laws. We do not believe, however, that gross tonnage is necessarily an appropriate criterion to judge whether a vessel once owned by a foreigner can be redocumented. We would be open-minded to language which restricted the type of employment in which such vessels could engage. If that were not possible, then we might be willing to consider a tonnage threshold much lower than 100 gross tons; say, for example, 20 gross tons, which would probably cover most pleasure craft which the owners wish to use as fishing or tour charter boats. The tug GILBERT, a vessel we do not believe should be redocumented, measures less than 100 gross tons. There are many tugs designed specifically to be slightly less than 100 gross tons in order to exempt them from certain regulations applicable to vessels of 100 gross tons or more. The industry is encouraging the Maritime Administration to sell to foreigners those vessels (many of which are small offshore and inland vessels) repossessed because of bankruptcies. Once sold we would not want them to be automatically eligible for redocumentation.

Whether Crowley Maritime Corporation continues to be a viable corporation is not going to depend on whether H.R. 2024 (or a substitute measure) and H.R. 4460 are passed or not. We feel, however, that the first proviso to the Jones Act is a valuable law that should be enforced when to waive it imposes an adverse economic impact on operators who have adhered to the law. We oppose H.R. 2024 and H.R. 4460 in the interests of the tug and barge industry as a whole, especially the small operator who may be unaware of these bills or not capable of affecting the outcome of the legislation.

QUESTIONS SUBMITTED BY THE HONORABLE WALTER B. JONES, CHAIRMAN,
SUBCOMMITTEE ON MERCHANT MARINE, TO CROWLEY MARITIME CORPORATION;
ALONG WITH ANSWERS FURNISHED BY CROWLEY, 20 JULY 1988

Q. 1. Are you aware of any towing vessel operator that can do -- or wants to do -- the job the GILBERT is doing?

A. 1. We have not canvassed the industry to determine what towing vessel operator can or wants to do the job the GILBERT is doing. The towing of barges, however, for dumping at sea, is a basic function in the industry which almost any towing company would be capable of performing, and it is difficult to imagine that if the industry were solicited, companies would not respond.

Q. 2. It has been alleged that it is not economically feasible for the towing industry to engage in the GILBERT's operations. Could you please comment on this statement?

A. 2. The allegation that it is not economically feasible for the towing industry to engage in the GILBERT's operation implies that the payment to the operator by Canaveral Seafoods would be less than the operator's costs plus a reasonable profit. There is no inherent reason why the job would not be economical to the towing industry, although there may be justification for a proprietary, rather than a contract operation. It may, indeed, be less expensive for Canaveral to do the work in-house, particularly if it can be integrated using manpower from their fishing fleet. On the other hand, a contract operation might have benefits such as the availability of additional equipment as replacements during maintenance periods. In opposing restoring coastwise privileges to the GILBERT, we are not arguing that Canaveral Seafoods should not, if they wish, conduct an in-house operation. There is, however, no justification for administering the first proviso of Section 27 differently for an in-house operation than for a contract operation. That proviso was intended to prevent unfair low cost competition to both operators and shipyards, neither of which is immune from the effects of artifically low costs incurred in a proprietary operation.

Q. 3. The operation of the tug GILBERT has been referred to as one that is justifiable on the basis that it is beneficial to the environment and meets all Federal and State standards.

The operation has been referred to as one that is intermittent and not economical for a tug operator -- other than an in-house tug operator.

Based on these observations, wouldn't it be in the public interest to assist those involved in the GILBERT's operation?

A. 3. The benefits to the environment, the adherence to Federal and State standards, and performing the work in-house, can be realized equally as well by a coastwise qualified tug as with the GILBERT. There is nothing intrinsic in the GILBERT that justifies its use rather than another vessel of approximately similar capacity, except what appears to be a very low acquisition cost. That low acquisition cost, we suggest, is because it does not have coastwise privileges. From our reading of testimony we conclude that Canaveral Seafoods was required by the Florida Department of Environmental Regulation to change its method of disposing of scallop wastes and understandingly attempted to devise and implement the lowest cost, environmentally sound alternative. Not complying with the law, however, is normally not considered an appropriate way of reducing costs. To assist those involved in the GILBERT's operation may be in the public interest by lowering costs in this case, but adherence to the Jones Act is justified as being in the public interest in the long run for reasons that are well established and known to the committee.

Q. 4. Are you aware of anyone else who opposes providing relief for the GILBERT's operation?

A. 4. We know that the Shipbuilders Council of America and Foss Maritime have opposed relief for the GILBERT's operation.

Q. 5. Do you have any suggestions for amending H.R. 2024 so that these operations can continue?

A. 5. Congressman Bill Nelson's letter of December 17, 1987 to Congressman Biaggi makes clear that the true owner of the GILBERT, a Florida bank which now holds a security interest in the vessel, wants the title cleared and the vessel approved for coastwise trading to "avoid problems in any future transactions." Crowley Maritime does not consider this to be a legitimate reason for the passage of H.R. 2024 since it is apparent from the testimony that the GILBERT and the related barges were acquired by persons knowledgeable of the law, with full knowledge of the circumstances surrounding the earlier "foreign" sale, and at a price reflecting those circumstances. Whatever legislation is adopted should not attempt to protect the bank's interest. We would, however, reluctantly, not oppose the granting of coastwise trading privileges to the GILBERT for the sole purpose of transporting waste scallop viscera and scallop plant waste water for Canaveral Seafoods.

Q. 6. Does Crowley have available the same kinds of tugs and barges as the GILBERT and its barges?

A. 6. Crowley Maritime owns and operates tugs and barges that can be used in an operation as described in the documents which we have seen. Availability of the equipment would depend on the employment of the vessels at the time we were solicited and the relative profitability of the opportunities for employment at the time.

Q. 7. Would your company be in a position to do the kind of hauling that the owners of the GILBERT are doing?

A. 7. We would need to know more about the operation before stating whether we are in a position to do the kind of hauling that the owners of the GILBERT are doing. We hold ourselves out, however, to do all kinds of tug and barge work on all the coasts of the United States and throughout the world. We have a heavy concentration of operations in Jacksonville, Florida. We have in the past towed barges with merchandise from Port Canaveral to offshore islands. With the limited information available, we are not in a position to assert that our costs would be competitive but cost is not a criterion for waiver of the Jones Act.

Q. 8. Could you support a modified form of H.R. 4460 that was limited to vessels designed for pleasure use that someone wants to charter?

A. 8. Yes.

Q. 9. Is your main concern the possibility of competition from vessels obtained after bankruptcies?

A. 9. Competition from vessels obtained after bankruptcies is a concern, particularly in a reorganization in which the reorganized company's debt obligations provide an unfair advantage to other operators who are meeting their obligations to creditors. We have not, however, associated H.R. 4460 with that problem. Instead we assumed it related only to vessels that were attempting to reacquire coastwise trading privileges having lost such privileges as a consequence of having been sold foreign or placed under foreign registry. Our testimony and supporting brief explain why we believe the first proviso is a good law that should be enforced.

Q. 10. If all modifications or repairs were required to be done in U.S. shipyards, would that change your view of H.R. 4460?

A. 10. No.

PREPARED STATEMENT OF JAMES C. HARPER, ON BEHALF OF THE VESSEL M.V. GILBERT, BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE, JUNE 16, 1988

MEMORANDUM FOR: The House Merchant Marine and Fisheries Subcommittee

Reference: HR 2024, introduced by the Honorable Bill Nelson, of Florida, for the re-documentation and certification of the MV GILBERT, a tugboat owned by Canaveral Seafoods, Inc., Port Canaveral, Florida

In support of the passage of HR 2024 to authorize re-documentation of the named vessel and certification for its limited use for the purpose outlined herein, Canaveral Seafoods, Inc., through its attorney, respectfully submits the following data relative to the facts and circumstances relating to the need for this sanction.

HISTORY:

During the years 1981 and 1982, the harvesting and processing of callico scallops at Port Canaveral, Florida, grew rapidly, and in the latter year it appeared to the Environmental Protection Agency that the in-harbor processing facilities were to a significant extent polluting the port and adjacent waters with plant waste.

Hence, an action was filed by the State of Florida to enjoin the discharge of processing waste into the local waters. Due to administrative and judicial processes and delays, enforcement was postponed until 1984, when a consent order was entered into between the EPA and the processors, providing for establishment of environmentally acceptable methods of processing the scallops and disposing of the waste. Alternatives were limited to the construction of private sewage treatment plants, overland hauling and on-shore disposition of the waste, or ocean dumping.

Of the three major scallop processors in operation and affected by the order, Canaveral Seafoods, Inc., the largest, elected to design and implement a system for barging the waste water and organic remnants from the processing plant back out to sea for dumping. This plan was proposed and eventually approved by all concerned agencies of State and Federal Government.

After long and very expensive procedures, with a deadline rapidly approaching, Canaveral Seafoods, Inc., was placed in a position of urgency in locating, acquiring, refurbishing, and equipping the vessels required for its dumping plan. Specifically, the plan was proposed in November, 1985, and approval was received in January, 1986, though some substantial interim assurance had been counted upon by way of initial correspondence between various counsel for the petitioner and the agencies involved.

In the meantime, starting in November, 1985, Canaveral Seafoods Inc., searched the markets for suitable equipment, and in December, located the MV GILBERT and three barges, and pressed by deadlines, entered into contracts to purchase them and begin extensive refitting and modifications to adapt them to the intended use. Subsequent to acquiring the vessels, and in the processes of applying for re-documentation and mortgaging, the buyer learned that there were significant discrepancies in the titles, and that as to the MV GILBERT, extraordinary relief would likely be required. Upon being notified that the document had been surrendered in 1975 and the vessel removed from US documentation to be sold to a foreign buyer, recourse to the seller was commenced, and from response verified and further investigation, it was learned that no actual sale to any foreign buyer had ever been consummated, and that the vessels had in fact been in the United States at all times since the removal, and had never been used in any manner by a foreign entity.

Inquiries were instituted to the U.S. Coast Guard Seventh District regarding re-certification and re-documentation of the tugboat and the barges, and a procedure was recommended and implemented for the barges, with permits obtained for extensive renovation and fitting out to meet the requirements of the plan. Through correspondence between agents for Canaveral Seafoods, Inc., and the offices of the Honorable Bill Nelson of Florida, the U.S. Coast Guard Documentation Branch, and the U.S. Customs Service, the barges were granted privilege for use, and it remained that the tugboat GILBERT would still require special legislation to re-document and return to service.

Hence, HR 2024 was introduced on behalf of Canaveral Seafoods, Inc., by Mr. Nelson, and work on extensive repairs and refitting of it were resumed. In the firm belief that permission would be granted for this limited use of the vessel, and pending outcome of the special proceedings, Canaveral Seafoods, Inc., in good faith, placed the tug and barges into service implementing the approved dumping plan in 1987.

During the entire period involved in the foregoing account, Marine Documentation, Inc., of Miami, Florida, was involved as documentation specialists and recording agents, and were as such engaged in the attempt to resolve the problems with documentation.

PRINCIPAL FACTORS RELIED UPON TO SUPPORT PASSAGE OF HR 2024:

1. Unique and Isolated Nature of the Use of the Vessels Involved

   As set out in the attached plan and confirmed by the fact that there are no other known facilities of a like nature in service anywhere, the service in which the subject vessels are engaged is extremely limited and unique. The barges required fitting with diesel engines and pumps, special ballasting, and steering devices to assist in maneuvering. The GILBERT, considered to be the proper size and displacement and proportionately powered for such use, was fitted out specifically for the limited use, and not intended for any other use or purpose. The logistics of the plant dockage and turning basin were factors in the selection of the particular type and size vessels.

   At the time the requirement for the equipment matured, there were no other similar vessels to be found, either for sale or for lease or contract service.

2. Costs to Canaveral Seafoods, Inc., in Implementation:

Acquisition cost of MV GILBERT, January 1986	$ 105,000.00.
Repairs, refurbishing, and refitting GILBERT	150,300.00.
Acquisition of barges (3)	105,000.00.
Repairs, refitting, and equipping barges	100,200.00.
Total invested in equipment to date...............	$ 460,500.00.

In addition to the costs of acquisition and equipping of the tugboat and barges, it is estimated that an additional $85,000.00 has been spent by Canaveral Seafoods, Inc., in engineering, consultant, attorney, and other fees and expenses directly involved in the preparation of the plan and presentation through approval for the intended use. A total inclusion of all records and receipts directly relating to this item is deemed inappropriate for the scope of this memorandum, but all such records are readily available.

3. Unavailability and Non-feasability of Vendor Equipment:

As noted above, at the time the need for the equipment to implement the program arose, there were no vendors or contractors known on the Eastern seaboard with any equipment suited to the project, and still there are none known. Moreover, due to the seasonal and unpredictable nature of the scallop business, it would have been difficult to impossible, and still would be, to negotiate any contract for towing the barges in the disposal program, which would be economically feasible or acceptable to either the processor or the vendor. The net costs to Canaveral Seafoods, Inc., though considerable at the outset, in purchasing and equipping the barges and tugboat, are considered warranted largely because of the ability to depreciate the equipment. On the other hand, the cost to Canaveral Seafoods, Inc., for contracting towing service by a vendor, if it would be acceptable to the latter, would be prohibitive; the scallop "seasons" are often cut short or obliterated by a change in the weather.

At best, scalloping in the area pertinent to this matter is a risky business vis a vis constants which would provide a basis for a mutually acceptable contract for towing of the water barges by independent contractors.

4. Canaveral Seafoods, Inc., Position in the Local Economy:

In 1987, the total callico scallop industry in Port Canaveral, Florida, achieved gross sales of approximately $73,835,772.00. Canaveral Seafoods, Inc., represents 25% of that, for a total of $18,471,443.00. Canaveral Seafoods' payroll in 1987 was $1,868,836.00, of which $862,491.00 was paid to fishermen employed. Canaveral Seafoods employs a total of 85 people, with 42 of them fishermen.

The above payroll and employees depend upon the continued operation of the scallop processing facilities in Port Canaveral, which, as stated earlier, is the largest of the three major processors located there.

5. Summary:

The operation of the waste water disposal program in effect at Canaveral Seafoods, Inc., involving the use of the MV GILBERT and the three barges as integral parts of the total scallop harvesting and processing system, is a large and vital component of the economy of Brevard County and the State of Florida. The application and use of the MV GILBERT in the plant operation is strictly limited to the integral system of waste disposal, and is in no manner in competition with private enterprise, since there are no known companies or vendors with equipment which could be feasibly or economically contracted for.

Based upon the foregoing, supported by the Exhibits attached hereto where appropriate, it is respectfully urged that HR 2024 be granted approval, and that the MV GILBERT, Official No. 230568, Net 26 Tons, be re-documented and certificated for the use set forth.

Respectfully submitted,

CANAVERAL SEAFOODS, Inc.,

By:
Attorney

List of Exhibits:

EXHIBIT (A) - Waste Disposal Plan and Letter Indicating Approval
EXHIBIT (B) - Bill of Sale covering MV GILBERT
EXHIBIT (C) - Affidavit of Seller regarding Status of Vessel
EXHIBIT (D) - Letter from Seller regarding Status of Vessel
EXHIBIT (E) - Letter from Counsel regarding Urgency of Implementation of Disposal Plan.

LAW OFFICES
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ADDITIONAL OFFICES IN:
POMPANO BEACH
NAPLES
FORT MYERS
BOYNTON BEACH

December 2, 1985

Larry Morgan
Office of General Counsel
Department of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301

Re: Department of Environmental Regulation v. Canaveral Seafoods, Inc.
OGC File No. 82-0546

Dear Larry:

In accordance with the requirements of paragraph 9 of the Consent Order in the above-referenced case, I have enclosed Canaveral's ocean dumping plan. By copy of this letter I am directly supplying Alex Alexander a copy of the plan.

Reg Rogers at the Environmental Protection Agency (404/881-2156) indicated to me that a letter confirming Canaveral's exemption from ocean dumping permitting requirements will be forthcoming. Hopefully that letter will be signed and sent to us this week.

Canaveral can now proceed with purchasing, refurbishing and refitting the barges and tug boats necessary to implement the ocean dumping program. Thank you very much for your cooperation throughout this process. If you have any questions or require additional information please contact me.

Sincerely,

J. Alan Cox

JAC/dg

Enclosure

cc: Alex Alexander (with enclosure)
Edgar Griffis
Leonard Spielvogel
Brian Bussen
Jim Harper
Diane Guthrie

EXHIBIT (A).
In Re: HR 2024 - Subcommittee Hearing 6/16/88

OCEAN DUMPING PLAN FOR CANAVERAL SEAFOOD

CURRENT OPERATION

Canaveral Seafoods, Inc. ("Canaveral") operates its calico scallop (Acquipectin gibbus) processing facility at Port Canaveral in Brevard County, Florida. Scallops processed at the facility are harvested from the Atlantic Ocean by fishing trawlers using nets. Canaveral maintains its own fleet of trawlers plus it can purchase scallops from independent fishermen who bring their catch into the Port for sale.

Once the scallops have been processed, the meat is packaged for delivery. The shells and other waste products are separated for appropriate disposal in upland landfills. The shells are placed at landfills owned by Canaveral and are ultimately recycled for use in various activities. The trash fish and viscera are disposed of in commercially operated land fills. The washwater effluent generated by the processing plant passes through a shell filtering facility and is discharged into the waters of Port Canaveral.

OCEAN DUMPING PROPOSAL

In an effort to remove its discharge from the waters of the port, Canaveral proposes to collect its scallop viscera and washwater effluent, transport the wastes offshore on barges, and dump the wastes at sea. Use of a barge transport system to remove the wastes from the Port will help to alleviate the stress such discharges make on water quality in the Port and will provide the positive benefits of introducing the material into the food cycle at designated disposal sites in the Atlantic Ocean. These disposal sites would receive only viscera and washwater -- shells would continue to be disposed of at appropriate landfill sites.

In order to effectively collect all washwater and viscera generated by the processing facility and to conserve water use, a new plant is being constructed at the same site as the existing plant. The new facility will be completed and on line by January, 1986. It is scheduled to begin operation on January 15, 1986. The new plant will be outfitted to pump the effluent stream to the barges and the existing plant will continue to be used as a packing house.

Three (3) barges and two (2) tugboats will be used to implement the ocean dumping plan. The vessels to be used are described below:

a. One (1) 125' x 34.1' x 10.1' tank barge, with a capacity of 220,000 gallons

b. One (1) 109' x 24.5' x 10.5' tank barge, with a capacity of 158,000 gallons

c. One (1) 110' x 38' 7.9' tank barge, with a capacity of 140,800 gallons

d. One (1) 54' 650HP tugboat

e. One (1) 28' 300HP tugboat

In addition, Canaveral owns a fleet of trawlers (currently 18 boats) used to harvest the scallops that could readily be used in lieu of either of the tugboats to move the barges if such a need arose.

These five (5) vessels are currently under option to Canaveral and will be purchased and transported to Port Canaveral immediately upon receipt of a determination by EPA of exemption from ocean dumping permitting. The vessels can be properly documented, rigged, inspected, and in operation within ninety days from acquisition.

Effluent (consisting of washwater and liquified viscera) will be pumped by centrifugal pumps in the plant to the barges in 6" reinforced flexible hose from the plant sumps to gate valve manifolds at two (2) stations on the barge wharfs. This will allow for continuous, uninterrupted flow directly into the barge loading flanges, with control and anti-spill measures through the gate valves and selectors and with emergency shut-down provisions as well as provisions for when the plant is idle. Electricity will be the source of power for this aspect of the plan.

"No-spill" shields or flanges and bi-valve controls for shutoff and selection of lines will be used. This plan contemplates potential flows of effluent of 20,000 gallons per hour from the plant to the barges. It is the same method that is employed by oil barges in transporting petroleum.

The three (3) steel tank barges (with a combined capacity of 518,800 gallons) will be utilized on a rotating basis. Each barge will be rigged and fitted in accordance with U.S. Coast Guard regulations concerning lighting and safety equipment and will be inspected and certified by the Coast Guard as required for all vessels over 100 tons.

The barges will be secured parallel to the wharf for onloading of effluent. The smaller tug will be used to position the barges and will handle turning the loaded and empty barges within the basin. Moorings will be essentially the same plan as used by oil barges in the harbor.

Each barge will be fitted with a 6" dredge-type pump with a minimum of 8-blade manganese bronze impellor and sump pick up for removal of the effluent from the barge. The barge discharge pumps will be of adequate capacity to pump a minimum of 5,000 gallons per minute (gpm) on each barge. Uptake of effluent will be designed such that no material is left in the barge upon completion of a disposal run by locating the dredge pumps in the lowest bilge area of the respective barges. The pumps will be powered by diesel engines of no less than 280 shaft (continuous) horsepower and approximately 3 to 1 marine reduction gears. This equipment will be designed and specified by the consulting engineers. A spare pump and engine will be retained by Canaveral at its facility for use in any of the barges, if that need should arise.

Each barge will be fitted with adequate anchors and rope for use in conjunction with mooring at the facility and in the basin. Make-up fittings to allow being towed astern or alongside or to be pushed will also be used.

Discharge of the effluent will take place through flexible pipe submerged over the side or bow of the barges. This will allow the barge and tug's propeller wash to help dissipate the effluent. Discharge will occur in areas approved by EPA as having adequate water depth to insure that no suspended solids settle to the ocean floor. In any event, discharges will not occur within three (3) miles of Florida's Atlantic coastline.

As mentioned above, the smaller tugboat will be used for positioning and moving the barges within the basin. The larger, oceangoing tugboat will move the barges to the designated disposal areas and keep the barges moving during the actual disposal process. Disposal from barges underway will contribute to dissemination of the effluent thereby providing further assurance that this plan will not have adverse impacts on water quality or marine habitat. Ocean bottoms within the disposal areas are characteristically void and therefore the scallop waste should pose no threat to existing marine bottom life.

Discharging the effluent consistent with the manner described herein will scatter the solids for consumption by oceanic organisms. The possibility of stagnation or deposition of suspended solids is minimized and reasonably can be expected to not occur. No slicks should develop because discharge will be well below the waterline. Continuous movement of the barges will avoid any single-point "slugs" of effluent being discharged.

A flexible timetable for rotating the barges will be developed to insure orderly and systematic continuation of the process. The amount of time required to fill any given barge varies in response to the capacity of each barge and the flow rate of effluent from the processing plant. Based on an average flow rate of 0.44 million gallons per day (mgd) from the plant, the following estimates are made of the time in which it would take to fill the respective barges (identified by their rated capacity):

1. 220,000 gallon capacity -- 12 hours
2. 158,000 gallon capacity -- 8.6 hours
3. 140,000 gallon capacity -- 7.7 hours

As noted, these calculations are based on an average daily flow of 440,000 gallons of washwater. The volume of washwater varies in relation to the success of the trawlers in harvesting the scallops. "Shucking runs" (processing the catch) may vary in duration of operation of the plant between 12 to 24 hours a day. At peak times, the plant may even operate seven (7) days per week. The plant averages operating 20-24 days per month. Between June 1984 and June 1985, average daily flows of washwater ranged from 0.38 mgd to 0.50 mgd (yielding an average flow rate of 0.44 mgd). In addition to washwater, the plant generates an average of approximately 3,000 gallons per day of viscera.

The combined capacity of the barges (518,800 gallons) is more than sufficient to handle the maximum effluent flow from one day's operation of the processing plant. Therefore, under routine operating conditions each barge would be required to make a maximum of one trip per day to ocean dump the collected effluent.

Once the barges are at sea in the designated disposal areas, they will require from one (1) to one and a half (1.5) hours to completely discharge their load (depending upon the capacity of the respective barges). Transport time from the basin to the disposal areas will be approximately two and one half (2.5) to three and one half (3.5) hours, with a comparable return travel time.

Based on the barges intended to be used, Canaveral plans to rotate the barges so that the largest of the three (3) is used at night and the smaller two (2) are used during the day. This would allow the largest barge to depart for sea around sunrise, permitting one of the smaller vessels to be positioned for loading, and the third barge already in position. The empty barges returning from sea will then replace the one that has been filled and allow the filled barge to be transported for disposal. Thus the time schedule will readily address the maximum flow requirements the processing plant generates.

If weather conditions warrant the drastic measure of stopping the barges from going to sea (such as a hurricane), such conditions would also cause the trawlers to stay in safe anchorage. Therefore, the processing plant would not be in operation since there would be no scallops to process. The oceangoing tug and barges are suited for operation in all navigable sea conditions. Therefore, any conceivable situation involving inability to go to sea because of weather conditions would pose no threat to the ocean dumping program since the barges have the holding capacity to retain the plant's effluent until such weather conditions pass and normal activities can be resumed.

Brevard Shipyard, Inc., is located in the West Basin of Canaveral Harbor. That facility is fully rigged and equipped to maintain, service, and equip all of the vessels and equipment employed in this ocean dumping plan. As mentioned above, any of the trawlers in Canaveral's fleet could also be used in lieu of either of the tug boats if such a need arose.

This operation would not interfere in any manner with other uses of the Port. All wharfage and seawall adjacent to the barge area will be protected by pilings and heavy rubber buffers or sufficiently large tires. Trained tugboat captains and handling crews will man all equipment proposed for this operation.

SUMMARY

Canaveral Seafoods, Inc., will employ a system of tugs and barges to collect, transport, and dispose of its scallop viscera and washwater by ocean dumping. Disposal shall occur from barges underway (in designated disposal areas greater than three (3) miles from Florida's Atlantic Coastline) by pumping the effluent through flexible pipe extended below the waterline. Ready availability of backup equipment and vessels and the combined capacity of the barges insures that, once implemented, this ocean dumping program will allow Canaveral to cease discharging its effluent into the waters of Port Canaveral. Instead, the effluent will be disposed of at sea to become a valuable part of the marine food web.

Respectfully submitted

JAMES C HARPER & ASSOCIATES

October 30, 1985

James C. Harper, CMS
Consultant

EXHIBIT (A)

In Re: HR 2024 - Subcommittee
Hearing 6/16/88

DEPARTMENT OF TRANSPORTATION U.S. Coast Guard CG-1340 (Rev. 5-82)	**BILL OF SALE**	2115-0110
1. VESSEL NAME MV GILBERT		2. OFFICIAL NUMBER1/ 230568

3. NAME(S) OF SELLER(S) AND INTEREST OWNED BY EACH

Atlantic Gulf & Pacific Company, Inc., (Texas Ltd)
PO Box 461
Baytown, Texas 77520

4. NAME(S) OF BUYER(S) AND INTEREST TRANSFERRED TO EACH

Canaveral Seafoods, Inc.,
70 S. Banana River Drive
Merritt Island, Florida 32953

5. CONSIDERATION RECEIVED

One dollar and other valuable considerations

6. I (we) do hereby sell to the buyer(s) named above, my (our) right, title, and interest in the vessel together with the following necessaries and appurtenances:

ALL MARINE EQUIPMENT ON BOARD

This sale is made to the buyers in the proportion specified, subject to the following warranties and conditions:

NONE - SOLD AS IS, WHERE IS, WITH NO WARRANTY

7. SIGNATURE(S) OF SELLER(S) Atlantic Gulf & Pacific Co., Inc., (Texas Ltd.) James J Murray President	8. DATE Jan 13, 1986

9. CAPACITY

100%-----ONE HUNDRED PERCENT OWNER...........

10. ACKNOWLEDGEMENT *(Insert such acknowledgement language as is required by state law.)*

On the 13 day of Jan 1986, personally appeared before me James J. Murray, who being duly sworn states that he is the President of the seller named herein, and that he has authority to execute this bill of sale, and that he has done so of his own free will.

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. JUNE [illegible] 1988
BONDED THRU GENERAL INS. UND.

Notary Public

The acknowledgement may not be taken by an officer or employee of the Coast Guard.

1/If vessel has never been awarded an official number, complete those items of vessel data on reverse of form as are known.

Previous Editions Obsolete

SN 7530-00-F01-1030

EXHIBIT (8). In Re: HR 2024 - Subcommittee Hearing 6/16/88

STATE OF FLORIDA

AFFIDAVIT

BREVARD COUNTY

I, James J. Murray, being duly sworn, depose and state that I am the President of Atlantic Gulf and Pacific Company, Inc., (TEXAS, Ltd.), and as such have the authority and capacity to make this affidavit, and further;

that said company is the owner of one Motor Tug known as GILBERT, Official Number 230568, Gross 39, Net 26 Tons, formerly of New York, and further;

that said vessel has never been delivered to, used by, or registered by an owner outside the United States, and therefore has never been delivered to any foreign interest, but rather has been in the United States and in the State of North Carolina, since the document was surrendered in anticipation of a sale.

James Murray

James J. Murray

Subscribed and sworn to before me this 3rd day of January, 19 88.

Notary Public

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. JUNE 4,1989
BONDED THRU GENERAL INS. UND.

EXHIBIT (C).

In Re: HR 2024 - Subcommittee Hearing 6/16/88

AG&P Company (TEXAS, LTD)
Post Office Box 461
Baytown, Texas 77520

March 1, 1986

Mr. James C. Harper
James C. Harper and Associates
Post Office Box 1163
Merritt Island, Florida 32952-1163

Dear Mr. Harper:

In reply to your inquiries regarding alleged discrepancies in the year the Tug Gilbert (No. 230568) was built, I offer the following information available to me.

The Texas title to the vessel, issued after the document was surrendered prior to the aborted foreign sale, is enclosed. It indicates the year of construction as 1954.

The documents to this and other vessels were surrendered in 1975 for an intended sale abroad and transfer to a foreign country, which, as has been established, never happened. I became associated with the Atlantic Gulf and Pacific Companies in 1971, and therefore do not recall when any vessel prior to that date was actually built or purchased by AG&P. The records of the company were in the headquarters at Baytown, Texas, up until hurricane Alicia came in 1983, and destroyed the office and all records of the company, which included records on not only the tug Gilbert, but also the barges and dredges.

We have some old service records, but no older than 1962, which were in the North Carolina office files. These records indicate that the tug Gilbert was powered by AG&P with the present D397 engine around 1960.

From unconfirmed information and my recollection after I became associated with AG&P, approximately eleven 57' tugs were ordered and built between 1930 and 1960, as well as a number of barges. I have located in a personal file the record of the building of Barge No. 70, which was in 1962 according to the Master Carpenter Certificate, which is attached. The documentation number assigned to No. 70 is close to that assigned to the tug Gilbert, and therefore it is my belief that Gilbert, though the keel may have been laid years earlier, was not actually commissioned until 1954, as our old records reflected.

I regret that this problem has arisen with your client; however, be assured that neither I nor any other person associated with AG&P intended any deceit regarding the year of any equipment which has been sold by us to your client or anyone else.

The prices set for sale of the equipment were set with regard to our depreciated values and what we firmly believed were fair in the market, and were not in any manner associated with a specific age or year of construction. I believe you will agree that there are virtually no such pieces of equipment on the market, and that for the purposes you stated as required for the equipment purchased from AG&P, the Tug Gilbert and the three barges were suitable, and, as noted on the bills of sale, purchased "as-is."

We agreed to have the sum of $10,000.00 held in escrow pending inspection of the Gilbert's keel coolers, and if found to require replacement, to have the cost of such necessary repairs paid from that escrow. At this time, we are awaiting from you a detailed statement of specific damage or waste in the keel coolers, and an accounting on the escrow payment. Please contact me as soon as you have this completed.

I value friendships made in the course of business, and regret that there appears to be suspicion of something less than candor on our parts; however, I must remind you that you were the assigned surveyor for your client, and we made no warranties to you other than those regarding the keel coolers on the Gilbert. Due to the fact that Gilbert had laid in fresh water with good zincs for the period since her last haulout and partial replating, I was indeed surprised to see that there was waste aft to the extent found following your sandblasting.

I trust that this will reply to your questions.

Sincerely yours,

AG&P Company (TEXAS LTD)

James J. Murray, President

JJM/vc

EXHIBIT (D).

In Re: HR 2024 - Subcommittee Hearing 6/16/88

DIANE S. GUTHRIE
ATTORNEY-AT-LAW
POST OFFICE BOX 1323
25 McLEOD STREET
MERRITT ISLAND, FL 32952-1323

305/453-6690

February 6, 1986

Edgar Griffis, President
Canaveral Seafoods, Inc.
70 South Banana River Drive
Merritt Island, Florida 32952

In Re: Canaveral Seafoods, Inc. - DER Consent Order

Dear Edgar:

I have received written committment from the Department of Environmental Regulation that the Department will grant the sixty-day extension of the barging requirement, pursuant to my letter of January 23, 1986.

This sixty-day extension will require that Canaveral Seafoods, Inc. be barging not later than April 10, 1986.* For that reason, it is imperative that we continue to meet the schedule provided to me by Jim Harper which shows the target for full operation of the system at April 1, 1986.

I doubt seriously that the Department would be willing to give us any further extension of the barging because it would be impossible for us to meet the remaining conditions of the Consent Order in the event that barging, for any reason, became impossible.

Please advise if there are any problems with meeting the time schedule set forth by Mr. Harper. I am enclosing a copy of the written committment from the Department.

Very truly yours,

Diane S. Guthrie

Diane S. Guthrie

DSG:mlt
Enclosure
cc: J. Alan Cox, Esq.
Brian J. Bussen, P.E.
✓James C. Harper, P.E.
George "Jook" Patrenos
C. W. Sheffield, P.E.

EXHIBIT (E) - In Re: HR 2024 - Subcommittee Hearing 6/16/88

* Extended to 1-1-87 by consent -

FEB 06 1986

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

ST. JOHNS RIVER DISTRICT
3319 MAGUIRE BOULEVARD
SUITE 232
ORLANDO, FLORIDA 32803-3767

BOB GRAHAM
GOVERNOR

VICTORIA J. TSCHINKEL
SECRETARY

ALEX ALEXANDER
DISTRICT MANAGER

CERTIFIED
P-407-853-094

January 31, 1986

OSJ-EF-86-0069

Diane S. Guthrie
Attorney-At-Law
Post Office Box 1323
25 McLeod Street
Merritt Island, Florida 32952-1323

Dear Ms. Guthrie:

Brevard County - IW
Canaveral Seafoods, Inc.
OGC Case No. 82-0546

This acknowledges receipt of a copy of your January 23, 1986 letter and enclosures to Daniel H. Thompson and Larry Morgan, concerning the above referenced enforcement case in which you requested additional time to complete paragraph 9 of the Consent Order, concerning the implementation of the ocean dumping plan. As you requested, this Department will require that the ocean dumping plan be implemented by April 11, 1986.*

In accordance with paragraph 26 of the Consent Order, this letter will serve as a written modification to the Consent Order. It is requested that you direct any further requests of this nature to me with copies to Daniel Thompson and Larry Morgan.

If you have any questions concerning this matter, please contact Paul Morrison or W. E. Darling, Enforcement Section, at 305/894-7555, or at the above address.

Sincerely,

A. Alexander, P. E.
District Manager

AA/gg/wed/pmm

cc: Dan Thompson, OGC, Tallahassee
Ralph Maloy

EXHIBIT (E) - HR 2024

Hearing 6/16/88

* Extended to 1-1-87 by consent

Protecting Florida and Your Quality of Life

James C. Harper & Associates

Marine Surveyors
Claim Investigators & Loss
Adjusters
Consultants

James C. Harper
Principal Surveyor
Member: N.A.M.S.
S.N.A.M.E.
N.C. State Bar

Savelle L. Salles
Associate

JUL [illegible] 1986
[illegible] CONGRESSIONAL OFFICE

July 15, 1986

Honorable Bill Nelson
US House of Representatives - Florida
780 S. Apollo Boulevard
Suite 12
Melbourne, Florida 32901

Re: Redocumentation of Vessels
Canaveral Seafoods, Inc.,
Port Canaveral, Florida

Dear Congressman Nelson:

I have the honor to address you regarding a problem which has arisen with regard to redocumentation of four vessels owned by your constituent, Captain Edgar Griffis' Canaveral Seafoods, Inc., at Port Canaveral.

Specifically, the problem relates to a tug boat and three water barges purchased by Canaveral Seafoods, Inc., for use in scallop plant waste water disposal, which vessels had ten years earlier been sold to a foreign corporation, but had never been delivered to that corporation, or removed from or used outside the United States. A brief history and summary of the matter follows.

In 1984, the Department of Environmental Regulation issued an order regarding disposal of scallop plant waste water at Port Canaveral, which in effect required the Canaveral Seafoods plant, and others in the Port, to devise acceptable methods of disposing of the waste water and viscera, or to shut down.

Canaveral Seafoods, Inc., adopted a plan to transport the waste out to sea in barges, and redistribute it safely and effectively in the ocean from which it came. That plan was finally approved late in 1985. Attachment "A" contains copies of pertinent documents and correspondence leading to the approval of the plan.

Simultaneously with the effort to have the plan approved, and largely under our direction, appropriate equipment to implement the plan was sought. After extensive searching, three older fuel barges and one tug boat were located in September, 1985. These vessels belonged to Atlantic Gulf and Pacific Company, Inc., (TEXAS, LTD), and after approval of the disposal plan, were purchased by Canaveral Seafoods, Inc., for use in the approved plan. However, prior to purchasing the vessels, and being made aware by the owners that in June, 1975, all four vessels had been sold by AG&P Company, Inc., to South Marine, Limited, a foreign corporation, with the intent to transport them to the middle east for use there. But the sale was actually never consummated due to hostilities which arose there, and in fact, the vessels never left the United States, and were never documented in a foreign country, or used by any foreign interest.

We inquired of the U.S. Coast Guard Seventh District as to the possibility of having the vessels redocumented for a very limited use--waste water disposal under the DER approved plan. We advised the district office of the fact that the prior aborted sale to a foreign entity had taken place, and of the circumstances. In October, 1985, we were advised by telephone that we could proceed.

On October 16, 1985, by my letter to the Commanding Officer, Vessel Documentation, in Miami, I outlined in writing the proposal and the history of the vessels, and on November 25, 1985, received a reply with instructions on how to proceed to have the vessels reinspected for the intended service.

At that point, Canaveral Seafoods, Inc., invested approximately $220,000.00 in the vessels, and began refitting and refurbishing procedures which amount to another $150,000.00. The vessels were transported to Port Canaveral, extensive work was done, and they were made ready for the intended use under the approved plan.

In May, 1986, we were informed by the Documentation Specialist in Miami that there was a problem in obtaining the new documents for which we had been waiting--that Vessel Documentation was standing upon the regulation that once sold to a foreign entity, a documented vessel could not again be re-enrolled for service in the United States, and that we could not receive new documents on the four vessels.

Attachment "B" contains documents and correspondence relating to this problem, with the most recent a letter of June 25, 1986, advising us to correspond with Vessel Documentation in Washington.

Acting upon that advice, we contacted Mr. Ernie Seymour, Chief, Vessel Documentation Section, U.S. Coast Guard, Washington, D.C., and were *informed that we would have* to initiate some extraordinary action in order to achieve relief from the problem.

I wish to emphasize that all our contacts with officers of the U.S. Coast Guard have been received with courtesy and understanding, and that all such officers have been very helpful to us. We understand the basis for the decision made in Miami that the four vessels could not, without more, be redocumented for Canaveral Seafoods, Inc., and we respect that decision. We also understand the position taken by Mr. Seymour, and respect that as well.

I discussed with Mr. Seymour our dire need to seek relief from the regulation, and our reasoning for believing that we are entitled to such relief. It was my impression that Mr. Seymour, as well as the Documentation Officer in Miami, felt that our case was valid, and that this approach was justified.

The four vessels involved are:

M/V GILBERT, Official No. 230568, Net 26 Tons
Barge AG&P No. 8, Official No. 172898, Net 116 Tons
Barge AG&P No. 17 Official No. 270819, Net 209 Tons
Barge AG&P No. 70 Official No. 289204, Net 339 Tons

We have arranged attachments "A" and "B" in inverse order so that they more easily reflect the chronology of this matter, and trust that they will suffice to provide a background sufficient for your review.

It is therefore respectfully requested that you take this matter under advisement, and act upon it in any manner possible to provide relief for our client to permit registration and service of the vessels in the manner intended. We stand ready to assist in any way possible, and to provide other or further data.

With warm regards, I am

Respectfully yours,

JAMES C HARPER & ASSOCIATES

James C. Harper, CMS

JCH/s
w/o ~~Attachments~~
CC: Correspondents

(Ed. Note: See Mr. Harper's Prepared Statement for attachments)

(Source: Canaveral Seafoods, Inc., 15 July 1986)

SCALLOP PLANT WASTE WATER DISPOSAL PLAN (Addendum)

A. PUMPING FROM PLANT TO BARGES

6" reinforced flexible hose from plant sumps to gate valve manifolds at two stations on barge wharfs, to provide continuous, uninterrupted flow directly into the barge loading flanges, with control and anti-spill measures through the gate valves and selectors, with emergency shut-down provision or plant idle provision. Power source: Electric

B. UNLOADING BARGES AT SEA

6" drege pumps in the lowest bilge area of the barge, through discharge pipe at the bow of the barge, extending downward to place the exit below the waterline and in line with the propellor wash from the tug, providing dissemination of the liquid evenly and quickly into the wake. Power source: Diesel engines and marine gears.

C. TIME-SCHEDULING

1. Plant to barge: Estimated average rate of 20,000 GPM at low pressure
2. Barge to Sea: Estimated 5,000 GPM average rate at high pressure
3. Barge Rotation: One at sea and two at the dock at all times.

D. DOWN TIME/SUSPENSION OF OPERATIONS

1. Synchronous shut down of plant if emergency breakdown of pumps should occur
2. Substitution of trawler for temporary downtime of primary tug
3. Heavy weather - offsetting: if tug and barge cannot operate, trawlers cannot and plant will stand idle.
4. Hurricanes, etc., operations to be secured with barges safely moored in accordance with Port plan

QUESTIONS SUBMITTED BY THE HONORABLE WALTER B. JONES, CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE TO JAMES C. HARPER, CANAVERAL SEAFOODS, INC.; ALONG WITH ANSWERS FURNISHED BY CANAVERAL SEAFOODS, INC., DATED JULY 25, 1988

1. Could you tell us if the GILBERT is presently documented as a vessel of the United States and when she was so documented?

The marine vessel GILBERT is not presently documented as a vessel of the United States.

2. Has the GILBERT been engaged in commerce without proper documentation?

Prior to notice of the passage of PL 100-329, GILBERT operated under the authority of a letter from U.S. Customs stating exemption from documentation. Subsequent to notice of PL 100-329, GILBERT is not permitted to operate.

3. Prior to enactment of Public Law 100-329 earlier this month, you could have operated the GILBERT without special legislation. You only wanted a marketable title so you might be better able to sell the tug in the future. Now, I understand you cannot operate the tug at all.

Could you elaborate on these observations?

GILBERT cannot legally operate under the Approved Plan of Ocean Dumping without documentation now required by PL 100-329. This places the plan on hold, and puts the operation at a great disadvantage in the market.

4. Are you aware of any towing vessel operator that can do -- or wants to do -- the job the GILBERT is doing?

We are not aware of any towing vessel operator that would be willing to undertake the service of the GILBERT for reason of costs and uncertainty of the conditions in this industry. The cost to Canaveral Seafoods, Inc., in trying to obtain a contractor to tow the waste water would be prohibitive within the budget, and therefore no operator would be willing to undertake the service for what the integrated use of GILBERT permits.

5. Is the only statutory impediment to your continued operation the "foreign ownership" in your chain of title?

The only impediments to continued operation of the GILBERT in the Approved Plan of Ocean Dumping is the matter of the aborted sale of the vessel to a foreign owner in 1977.

6. Are you aware of any opposition to H.R. 2024 besides that of Crowley Maritime Corporation?

We are aware of no opposition to the passage of HR 2024 except that voiced by Crowley Maritime Corporation.

RESPECTFULLY SUBMITTED this 25th day of July, 1988.

JAMES C. HARPER, ATTORNEY AT LAW
112 South Front Street
Wilmington, North Carolina 28401
(919)763-4311

PREPARED STATEMENT OF CHARLES E. YATES, PRESIDENT, CRYSTAL PRODUCTS, INC., ON BEHALF OF THE VESSEL M.V. OCEAN CYCLONE, BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE, JUNE 16, 1988

Subcommittee on Merchant Marine
Hearing: June 16, 1988
Re: HR 4625

Mr. Chairman: My name is Charles E. Yates, and I am appearing here today as the owner of Crystal Products, Inc., a company which has entered into a contract to purchase the vessel M.V. OCEAN CYCLONE. If this bill is passed by Congress, Crystal Products will convert this oil drilling ship into a fish processor designed to process cod, pollock, flounder, and other fish species found in the Bering Sea in the Eastern Pacific Ocean.

I have been involved in the Northwestern Fisheries since 1978 after the passage of the "Magnuson Act." At that time, three of us joined to build a trawler to participate in what was hoped to be an expanded U.S. bottom fishery. Since our entry in 1978 with the one vessel, I have acquired an interest in and managed three additional U.S. trawlers. These four vessels presently participate in "joint ventures" with foreign processing ships, wherein our vessels catch fish in the U.S. Fisheries Management Zone and then sell them to these foreign processors. The result of the formation of the joint ventures have been that from 1978 when almost none of the bottom fish in the U.S. Management Zone were caught by U.S. vessels, today 100% or more than 2,000,000 tons of fish are harvested by U.S. flag catcher boats.

These joint ventures, however, are being phased out as U.S. processing capacity increases thereby absorbing the fish available for processing. To insure that our trawlers will continue to have a place in the U.S. Fishery, I have concluded that we must establish a U.S. flag processing vessel to replace the foreign processors, and thereby insuring a market for the fish caught by the trawlers. In order to do this, a mother ship processor must be developed. In order to create the mother ship processor, it is necessary to have a U.S. built hull with the sufficient size to hold the equipment necessary to process large volumes of fish and to house the large number of people required for the handling of these fish. A number of these types of vessels suitable for modification into processors have been sold from the U.S. Government surplus fleet. The M.V. OCEAN CYCLONE is one of these vessels.

However, when these vessels, including the M.V. OCEAN CYCLONE, were sold out of the U.S. surplus fleet, a contractual restriction was placed upon their use that prohibited there being used or operated "as a means of transportation of passengers or cargo for hire, or as a means of transportation of proprietary cargo. . . "

The Department of Transportation has interpreted this contractual restriction to preclude the utilization of these vessels in the U.S. Fishery in a manner in which we propose to use them. Because of this interpretation, Congress in 1980 adopted an Act which provided a two-year window for all of the owners of the surplus vessels to apply for permission to utilize these vessels in the U.S. Fishery. Regretfully, the owners of the OCEAN CYCLONE failed to apply for this permission. HR 4625 is intended to correct this oversight. Additionally, this bill will allow the M.V. OCEAN CYCLONE to take product on board within the U.S. territorial waters and then offload that product at a U.S. port, authorization which is also necessary for the success of the project.

Once we have obtained Congressional permission to use this vessel in the U.S. Fishery, and have completed the conversion of it to a mother ship processor, it is estimated that the ship will employ between 120 and 200 people annually with a payroll of between $8,000,000 and $15,000,000. Because this vessel will produce products that displaces foreign products, it is estimated that the vessel will have a positive effect on our foreign trade deficit of approximately $25,000,00 to $40,000,000 annually. Furthermore, an estimated $500,000 to $1,000,000 will be spent yearly in U.S. shipyards for maintenance and repairs. Fuel, supplies and provisions will be purchased in states of Alaska and Washington at annual cost of $6,000,000 to $10,000,000.

In addition to the direct expenditures into the Northwest economy, the vessel will provide fishing opportunities for four to eight U.S. trawlers who are presently facing a diminished or a disappearing market. These vessels will each have their own substantial impact on the economy, including major expenditures into the depressed ship repair industry of the Northwest.

In conclusion the operation of the M.V. OCEAN CYCLONE in the U.S. Fishery as a mother ship processor will have a significant positive impact on the regional economy of the Northwest, and some positive effect on the U.S. foreign trade deficit as well.

I thank you for the opportunity to address this committee and I hope that you will agree with me that the positive potential for the use of the OCEAN CYCLONE in the U.S. Fishery warrants your approval of this bill.

Respectfully submitted,

CRYSTAL PRODUCTS, INC.

By__________________________
Charles E. Yates
President

CEY/6132G

PREPARED STATEMENT OF GEORGE J. SMITH ON BEHALF OF THE "FAIR TIDE" BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE, JUNE 16, 1988

19 Demar Road
Lexington, MA 02173
June 9, 1988

U.S. House of Representatives
Committee on Merchant Marine and Fisheries
Attn: Walter B. Jones, Chairman
Room 1334, Longworth House Office Building
Washington, DC 20515-6230

Dear Mr. Chairman:

In mid-1981, my wife June and I, after ten years of sailing in New England, set out to purchase a charter sailboat. What transpired in the process, and is detailed herein, lead to this request for our vessel, Fair Tide, to be granted permission to operate in the coastwise trade. In the process of our search for the right boat and location to operate from, we came in contact with many people ready to sell us a boat and promise charter income. Our search for the right charter vessel included a visit to several yacht management and yacht brokers, both in the U.S. Virgin Islands and Florida. While there, we reviewed the possibility of purchasing either an already-established private charter yacht as well as working through a management company, which would operate the particular vessel we would subsequently put in their care. With this in mind we attended most of the major boat shows that fall from Boston to Miami in search of our new boat and charter location. The final decision was a Mason 43 cutter built by Ta Shing in Taiwan. The vessel was documented (644363 Net 14) and named *Fair Tide* with home port of Boston.

The vessel with a base price of $145,000 and optional equipment at a cost of $20,000, (most of which was required to charter), was purchased from a yacht broker in St. Petersburg, Florida. The total investment was considerably more than we anticipated spending. A commitment well beyond what we paid for our house a year earlier. The vessel seemed to be of very sound construction, a factor of major importance to us, as we intended to operate the charter business in Florida and New England for many years.

We were able to place the boat with a charter management company in Fort Lauderdale, Florida, that came highly recommended to us for the balance of the winter. That spring, my wife, June inquired about operating Fair Tide from the charter fishing boat dock in Nantucket, MA. We were told by the dock master that at the time, they only had three charter boats operating from the marina and that all three were half day fishing boats. No sailboats. Due to the lack of charter sailboats, we were told that the Fair Tide was more than welcomed. Aside from Fair Tide, they had expected only one other sailboat to charter from the marina that summer.

Not knowing exactly what our operation would be in Nantucket, we arranged two one week (bare boat) charters for Fair Tide upon its arrival that spring. The Fair Tide on both occasions came back with several hundred dollars in damage, due to the charter party's inexperience with the vessels' operation. Following this, we thought it best to leave our captain on board and have Fair Tide charter only on a scheduled basis. As the summer progressed, we seemed to establish a reasonable amount of business. The Fair Tide was doing well, considering it was its first season. The expenses were high. Between the mortgage, dockage, advertising and maintenence, we made little, but felt confident that by adjusting our rates and schedule, we could improve business.

For the next three seasons, we operated Fair Tide from Slip 18 on Straight Wharf in Nantucket. Our bookings steadily increased along with our charter sales and, unfortunately, also our cost of operations. We have thoroughly enjoyed our Fair Tide charter business and look forward to its continued operation and success.

It was not until January, 1987 that I learned that the Fair Tide was not operating correctly. Our insurance underwriters who had been insuring us as a charter boat for over five years would not renew our insurance to charter because of the foreign hull. About the same time I was also in a very serious automobile accident in Miami, Florida. After spending three weeks in intensive care and two months on my back, June and I decided that between the boat insurance/foreign hull situation and my health problem, we will not operate our charter business until this matter was resolved.

The time has come to address the situation concerning the Fair Tide and its use in coastwise trade. We entered into our charter business not knowing we would violate provisions of the Jones Act. Through this entire process, I would like to stress that no one informed us of a potential problem. If aware of such provisions concerning the use of foreign hulls, I would not have purchased the Mason. I wish to point out that a sizeable amount of the vessel is of United States manufacture, including the sails, mast, engine, rigging, instruments and more. The vessel has just completed a major amount of yard work, including a new engine and sails (over $15,000 in all). During the past six years, I have additionally expended sizeable sums on upkeep and charter operations. If forced to sell Fair Tide and start over with another vessel, I face a substantial loss; in the order of $50,000.

The Fair Tide has served a very useful role on Nantucket. I can say without hesitation that we have operated a reliable, safe and truly professional chartering business with many return customers. Over the course of four summer seasons, we served many thousands of guests, allowing us to share a very special and private view of the island, not readily available to all.

With this in mind, my family and I wish to thank you for the opportunity to present my situation. We ask you to please consider the approval of H.R. 4490 which would allow the Fair Tide to obtain commercial documentation and perform coastwise trade.

Sincerely,

June M. Smith

George and June Smith

July 19, 1988

Walter B. Jones
Chairman
Subcommittee on Merchant Marine
Room 1334
Longworth House Office Building
Washington, DC 20515-6230

Dear Chairman Jones,

In response to your letter dated July 11 regarding questions pertaining to the June 16 Subcommittee on Merchant Marine legislation, I wish to respond with the following answers to your questions:

(Q) Are you aware of any opposition to H.R. 4490?

(A) I am not aware of any opposition to Fair Tide's bill H.R. 4490.

(Q) How many passengers would you like to carry on FAIR TIDE?

(A) I would operate Fair Tide with a maximum of six passengers and therefore perform under the non-inspected vessel regulations. Eventually, having Fair Tide inspected to carry Ten to Twelve passengers would be desirous. In such case I understand modifications would have to be made to the vessel to comply with Coast Guard (T BOAT) regulation.

(Q) Can you explain the activity of the sailboat FAIR TIDE during the last six years.

(A) Unaware of the problem relating to the use of foreign built vessels, Fair Tide operated as a charter boat carrying six passengers for two hour sails from 1982 to 1986. Learning of the problem from our insurance agent in December 1986, the vessel did not charter the summer of 1987 and is awaiting the outcome of this Bill. My prepared testimony should cover this matter in detail.

(Q) Has the Coast Guard ever examined the vessel to ascertain the possibility of carrying passengers? If so, what is their opinion as to the condition of the vessel?

(A) No official inspection has ever been made of the vessel to ascertain the possibility of carrying passengers. However, the vessel has had several safety inspections and has been found to be in very good condition. As I pointed out, I would be very happy to be allowed to carry six or less passengers and to conform to all uninspected vessel requirements until such time I can meet the requirements of the inspected vessel requirement. I have enclosed a copy of a survey published by Nortcal Quarterly which details the vessel construction.

I wish to thank you for the opportunity to elaborate on Fair Tide's past and future plans. As conveyed in question number two, I would be most grateful to be allowed to carry six passengers as an uninspected vessel, until such time modifications could be made to carry additional passengers.

Sincerely,

George J. Smith

PREPARED STATEMENT OF GARY S. PAGAR, TRIBECA CORPORATION (AMERICAN BOAT CHARTER & BUILDERS, INC.) ("FREEDOM"), BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE, 16 JUNE 1988

SUMMARY

Request is being made to remove certain impediments to Coast Guard certification so that the Schooner "Freedom" would be able to engage in coastwise trade.

This request is being made based on the following:

- Approximately 90% of the dollar value of all capital expenditures invested in the "Freedom" have been spent in the United States.
- The "Freedom" is a continuing source of income to U.S. citizens and companies who act as crew members and suppliers respectively to the vessel. In the past five years more than three quarters of a million dollars has been spent in the United States.
- Approximately 60% of the physical structure of the "Freedom" has been rebuilt in the United States.
- Several charitable and social service organizations rely on the "Freedom" to continue to operate their programs or augment their operating expenses.

Rising costs have forced the "Freedom" to curtail its operations and will jeopordize its social service programs, unless it can carry passengers for hire and thereby subsidize its escalating operating costs.

HISTORY OF THE VESSEL

- Privately built 1969/1970 in Nova Scotia at a cost of under $40,000.
- Purchased by George Pagar of Boston (present owner's father) in 1971.
- Berthed in Boston Harbor 1971-1983.
- Taken over by Gary Pagar 1983.
- Thoroughly rebuilt in Boothbay Harbor, Maine 1983/1984 by U.S. Shipwrights at a cost of close to $250,000.
- Berthed in New York Harbor area 1984-Present.
- Founded social service program to take thousands of New York youngsters sailing each summer as part of an education program.
- Continues to spend more than $100,000 per year to maintain and operate the "Freedom" in New York.

CHARITABLE PURPOSE

- The Freedom, through a non-profit organization "Sail for Liberty's Children", has taken over two thousand of New York City's inner city school children sailing.
- The New York City Board of Education has endorsed and assisted in the program for the last three years and

has provided teachers to accompany the students and teach an "on-board" class on the Maritime History of New York and the importance of staying in school and getting an education.

- The "Freedom" has been an active supporter of the National Association for Advancement of the Arts and has hosted numerous fund raisers during the last 3 years to raise scholarship money for deserving students and "Presidential Scholars" in the Arts, for which NFAA is the selecting body.

UNITED STATES RECONSTRUCTION

- U.S. capital improvements since 1983 total nearly $250,000.
- U.S. capital improvements from 1971-1983 are estimated at $50,000.
- Physical reconstruction of over 60% of the vessel has been completed in the United States.
- 90% of dollar value of all capital expenditures during the life of the vessel have been made in the United States.
- Operating expenditures from 1983-1987 of over $500,000 have all been made in the United States.

NON-COMMERCIAL INTEREST

- The objective of removing the impediments to the carrying of passengers for hire is not to turn the "Freedom" into a business enterprise whose principal goals are profit and expansion.
- The intention of engaging in commercial activities is to augment the high operating costs of the vessel to preserve its continued use in New York and maintain its ability to sponsor "Sail for Liberty's Children" and other programs like it.

June 1, 1988

House Committee on Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515

Introduction

Often situations arise where well meaning citizens fulfill the spirit of a law, but because of the language with which the law was written, are unable to meet its specific requirements. Occasionally the negative effects of the application of a law to a specific situation are worthy of a further review and upon closer examination bear out that perhaps an exception should be granted for the greater good of a community. It is our hope that following your review of circumstances related to the schooner "Freedom," you will concur that this is one such instance. We are requesting that certain impediments be cleared so that "Freedom" can be issued a certificate of documentation for employment in coastwise trade. We believe this is merited for the reasons stated below.

History Of The Vessel

The Schooner "Freedom" was originally built in Nova Scotia during 1969/1970 by Mr. Alden Coffil and his son. The ship was owned and run as a private fishing boat by Mr. Coffil until his death in 1971. Mr. George Pagar, the present owner's father, purchased the "Freedom" for $40,000.00 in 1972, this purchase price represented an amount substantially above the original construction cost which was well under $40,000 (U.S.).

George Pagar registered and maintained the "Freedom" in Boston from 1972-1983. During this time, several thousand dollars were spent in the U.S. for maintenance, improvements, dockage and crew. When George Pagar passed away in 1983, his son, Gary Pagar took over the vessel.

History Of Charitable Use

The schooner "Freedom" is a classic all-wood sailing vessel that has been involved in various charitable activities as well as for private sailing purposes. For three years now, the "Freedom" has been taking New York inner city school children on educational sailing trips through a program called "Sail For Liberty's Children". There is never any charge for this program; it has been underwritten entirely by Gary Pagar, owner of the "Freedom". The program enjoys the co-operation and endorsement of the New York City Board Of Education. The cost of maintaining the "Freedom" has grown enormously in the past few years, and is now threatening the ability of Mr. Pagar to underwrite the program and maintain the "Freedom". The "Freedom"'s annual operating expenses are now close to $100,000. Dockage alone in New York City during the last three years has increased from $5,000 per season to almost $25,000 per season. Insurance and other costs have also risen dramatically. The Freedom, as it now stands, can only engage in demise charters of the entire vessel. It cannot carry passengers for hire without gaining Coast Guard certification. Demise chartering is not a viable way for the "Freedom" to subsidize its operating costs. Already, a few thousand students have participated in Sail For Liberty's Children. It is our objective to continue to expand this program. But to do so we need assistance.

Impediments To Commercial Use

It is our understanding that in accordance with the Jones Act, in order to be certified to carry passengers for hire, a vessel must be built in the United States and meet certain safety standards. We believe that the schooner "Freedom" meets or exceeds those standards in every respect. However, to the extent that upon inspection, it falls short in any way, we stand fully prepared to make whatever changes and improvements are needed to pass inspection. Although, more than 60% of the physical structure of the "Freedom" has been rebuilt in the United States in 1983 and 1984, the "Freedom" is still considered Canadian-built and we have been informed by the Coast Guard that we cannot be certified to carry passengers for hire in United States coastal waters.

United States Reconstruction

The "Freedom" has had capital improvements conducted since 1983 with United States companies, including materials and labor of almost $250,000. There are documented operating expenditures within the United States of over $500,000 since 1983 alone. These expenses do not include 10 years of prior capital improvements and operating expenditures when the "Freedom" was owned by Gary Pagar's father and berthed in Boston, Massachusetts. Since 1983, close to one-quarter of a million dollars has been spent on renovations and improvements to the schooner "Freedom". Work has included: renovation of 100% of the interior, replacement of all internal systems including all electrical, plumbing and other systems, replacement of all non-stationary rigging and most of the stationary rigging, fabrication of an entire set of new sails, replacement of major sections of the hull, replacement of almost all of the deck, construction and replacement of all of the cabin tops, construction of the "Freedom"'s 12 foot dinghy, replacement or reinforcement of virtually all structural and support beams and frames. All work has been done in the United States using United States materials, United States Labor and United States services. In addition, the "Freedom"'s engine, anchor winch, anchor, main mast and top masts are all built in the United States. Improvements alone represent a physical reconstruction of approximately 60% of the vessel. On a dollar basis more than 90% of the capital investment made during the life of this vessel has been made in the United States.

If the intention of the Jones act was to keep ship building dollars and jobs in the United States, then that intention with respect to the "Freedom" has been fulfilled. A simple comparison of the $40,000 purchase price, which was paid by Mr. Pagar's father to the Canadian builder in 1972 when he purchased the "Freedom", against over $700,000 spent in the United States since 1983 alone makes it clear that more than 95% of the money spent on this vessel has been spent in the United States and this does not even include the money spent by Mr. Pagar's father during his 11 year ownership of the "Freedom". Furthermore, not allowing the carrying of passengers for hire on the "Freedom" could mean more than just a lost charitable program; it could also mean lost jobs for over a half dozen full and part time crew members and lost business for the suppliers and vendors who work with the "Freedom".

Non-Commercial Interest

We further wish to emphasize that we have no intention of trying to turn the "Freedom" into a for-profit business venture. Our objective is to rent out the "Freedom" for private parties in New York Harbor from time-to-time in order to help defray expenses so that maintaining the vessel and continuing to sponsor programs like "Sail For Liberty's Children" can continue. Mr. Pagar has absolutely no interest or intention of trying to develop the Freedom into a for profit business venture.

Summary

The Freedom is a beautiful one-of-a-kind vessel that has participated in New York City's Parade of Tall Ships in both 1976 and 1986. It provides a unique and worthwhile service to the children of New York City. We appreciate your examining the attached documents and photographs, they will help to explain and substantiate the vessel's improvement and her charitable uses. Enclosed you will find: a description of the "Sail For Liberty's Children" program, thank you letters from the New York City Board of Education and the teacher who supervises the children while they are aboard the boat, press clippings regarding the "Sail For Liberty's Children" program, additional letters regarding other charitable involvement of the "Freedom", an overview of the schooner "Freedom"'s expenditures since 1983, photographs documenting the renovation work, descriptions of the work undertaken and a video tape of news coverage of the "Sail For Liberty's Children" program.

The Freedom is presently berthed at the Liberty Harbor Marina in Jersey City, New Jersey.

HOWARD S. KATZ & CO.
CERTIFIED PUBLIC ACCOUNTANTS
7700 MARINE ROAD
NORTH BERGEN, NJ 07047
Telephone (201) 868-7900

JUN 10 1988

May 27, 1988

Mr. Gary Pagar, President
American Boat Charter and
Builder, Inc.
c/o Tribeca Holdings
17 Battery Place
New York, NY 10004

Dear Mr. Pagar:

Your office asked me to give an overview of the expenditures incurred in connection with the renovation (capital improvements) and operations of the Schooner Freedom from its inception as a corporation in the business of chartering, through December 31, 1987.

Following is a summary of such expenditures:

Year Ended	Capital Improvements	Operating Expenditures
December 31, 1983	$ 60,851	$ 3,647
December 31, 1984	135,152	70,080
December 31, 1985	-0-	99,116
December 31, 1986	8,405	209,762
December 31, 1987	7,777	128,455
	$211,185	$511,060

In addition to the above, you incurred expenses of $7,200 prior to incorporating.

The above amounts do not include depreciation expenses nor do they include expenses accrued but unpaid, for any period.

Please call if additional information is required.

Very truly yours,

Howard Katz

Howard S. Katz

HK:jh

Sail For Liberty's Children

17 Battery Place, Suite 2130, New York, New York 10004, 212-363-5557

INTRODUCTION

Early in the summer of 1987, Manhattan Borough President, David Dinkens and forty New York City school children boarded the Schooner Freedom for 1987's maiden voyage of Sail For Liberty's Children, a trip that took them from lower Manhattan through New York harbor, past the Brooklyn Bridge, Ellis Island and the Statue of Liberty. While "Captain" Dinkens and his crew of youngsters enjoyed a hearty breakfast, they learned about New York's maritime history, about sailing schooners and discussed the main topic which brought them together this day: freedom and liberty.

Throughout this summer other New York school children will also participate in this adventure. Joining each group will be a leader of government, industry, or a celebrity who will serve as honorary captain for the sail, along with Freedom's regular four person crew. Together, they will provide the leadership, education, entertainment and inspiration for the program. As the fall of 1988 approaches, more than eight hundred New York school children and honorary captains will have formed new friendships based upon a shared joy of the sea and a new found understanding of freedom and liberty.

EDUCATIONAL PURPOSE

Behind the sailing is an important educational purpose, and it is this educational purpose that has prompted American Boat Charter to contribute the Freedom to this important project. It starts with the belief that quality time spent with inspirational people can have a long-term positive effect on a young person's personal growth and development. The purpose of this program is to provoke thought among young people and to provide inspiration. And, if we are successful in motivating them just a little bit, then programs like Sail For Liberty's Children represent time and effort well spent.

Children need role models when they are growing up; they need to grow up feeling confident in themselves. Our goal is to help foster an attitude that says "I can." The freedom to determine one's future has little meaning if children grow up without the self-confidence, inspiration and motivation to make their dreams become reality.

CURRICULUM

Sail For Liberty's Children proposes to reward the children of New York with an enjoyable lesson on the important history of New York harbor. With help from the South Street Seaport Museum, we have developed a comprehensive curriculum that includes historical sites, sailing lore and water saftey procedures. Students will learn how to sail the Freedom, a traditional boat, similar to those that played a major role in the commercial growth of New York harbor in the late 19th century. In addition, the honorary captain, on board each day, will explain to the children how freedom and liberty have contributed to his or her personal and professional life. These honorary captains will be selected for their leadership qualities and will represent business, sports, television, radio, the performing arts, government and other prominent professions. As active participants on the voyage, these leaders will reinforce the mission of the program and act as role models for the children. We hope that the impact of the days events will not end at dockside, but will encourage the children to continue to achieve for themselves.

SELECTION PROCESS

Sail For Liberty's Children, along with the Board of Education of the City of New York, will sponsor a roundtable discussion and essay exercise for the children of New York City in seventh grade and above. Eight hundred lucky children will participate in this program during its 1988 season. The children selected will not necessarily be those who are the most promising, but rather those who have shown the most interest in participating in the program and giving thought to the subject. These are the children whom the teachers feel can benefit most from the program. The Board of Education feels that the selection of students from the summer prep program for this project will reach both the under-achievers as well as the promising among the student population and that with this program we will be able to both reward and encourage these children.

LONGTERM OBJECTIVES

Unfortunately, all of New York City's nearly one million school children above the age of twelve cannot participate in a program which is limited by the size of a single ship's deck, even that of a 76 foot schooner. Our goal, however, is that by starting with a single boat, the success that we have, and the publicity that will accompany such success, will encourage others to participate in this and other similar programs.

THE FREEDOM

The Freedom is an exact replica of a 19th century coastal schooner, the same type of ship that made New York a center of trade nearly a century ago. All 76 feet were totally rebuilt to exacting standards in 1984. The Freedom's broad 17 foot beam, its heavy plank deck, its sturdy 3 1/2 foot rails and heavy displacement of 34 tons make for a steady sail. The Freedom is fully equipped with Coast Guard saftey gear and is operated with a four person crew, which includes a coast guard licensed Captain, a first mate, a bosun's mate and a deck hand. In addition, several teachers will be present to help supervise the children. Freedom has been in charter operation for 15 years and has an unblemished safety record.

NON-PROFIT STATUS

Sail For Liberty's Children is a non-profit corporation organized to provide educational and social services by providing sailing outings and other educational programs for school children. The group hopes to create partnerships between the public and private sectors through mentoring; thereby encouraging the further development of the children and the increased involvement of participants.

Questions about this program can be addressed to :

Sail For Liberty's Children
c/o American Boat Charter & Builder's Inc.
17 Battery Place, Suite 2130
New York City, New York 10004

or you may feel free to call us at 212-363-5557.

LEONARDO DA VINCI SCHOOL
(Intermediate School 61 Queens)
98-50 50TH AVENUE
CORONA, NEW YORK 11368
Telephone: 271-6200

Louis La Rocco
Principal

Assistant Principals
Gladys Miller
Nicholas Smith
Thomas J. Lucas
Theresa Lorcaro

April 15, 1988

Congressman William Green
110 East 45th Street
New York, NY 10017

Dear Representative Green:

In the last 2 years I have taught over 40 summer classes aboard the Schooner "Freedom" through the "Sail for Liberty's Children" program. Lessons have been conducted while sailing in New York Harbor. The topics have included: New York's maritime history, immigration, the concept of freedom, and the Statue of Liberty, and have reached more than 1500 students.

The Board of Education cooperates with the program by bringing 30-40 children to the boat daily during the summer and providing for their transportation and supervision. However, the real sponsor of this program is Gary Pagar who has paid for the ship, the crew, and dockage through his company, American Boat Charter and Builder's, Inc., without outside support.

Mr. Pagar has promised to expand the program to cover the entire summer season and to work with other charitable children's organizations. The problem is money. From what Mr. Pagar tells me, he cannot afford to expand the program unless he can reduce his costs for dockage, insurance and other expenses of maintaining a full time crew to operate the Freedom. He has told me that you might be able to help him solve this problem.

I'd like to invite you aboard the "Freedom" for one of the "Sail for Liberty's Children" trips this spring. If you could just talk with some of my students and see their reaction to the whole experience, I'm sure you will be convinced that this is a worthwhile program well deserving of your support. Anything you can do to help make this program larger and easier to afford would be a great service to the children of New York City.

Sincerely,
Joseph M. Varon
Joseph M. Varon
Crisis Intervention Teacher

BOARD OF EDUCATION · THE CITY OF NEW YORK

NATIONAL FOUNDATION FOR ADVANCEMENT IN THE ARTS
1500 Broadway • New York, New York 10036 • (212) 719-3500
3915 Biscayne Boulevard • Miami, Florida 33137 • (305) 573-0490

June 13, 1988

House Committee on Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515

Dear Committee Members:

The NFAA is a nonprofit agency whose purpose is to further education and work opportunities for aspiring young artists. One goal of our main program, the Arts Recognition and Talent Search (ARTS), is to give artists the same popular and financial assistance currently reserved for high school athletes and academic stars. ARTS is the only national program to recognize young artists in all major disciplines: dance, music, theater, visual arts and writing. In the past seven years, over 38,000 young artists have participated in the ARTS program.

For the past three years, through the generosity of Mr. and Mrs. Gary Pagar, we have been able to hold yearly fund raising cruises aboard the schooner "Freedom." Use of the "Freedom" has helped us to generate over $5000 in contributions, which have gone to students in the New York area who participated in ARTS.

Without the schooner "Freedom", our fundraising job would be much harder. We would appreciate your help so that we may continue to use the "Freedom" in the future.

Sincerely,

Leslie Laird Kruhly

Leslie Laird Kruhly
Vice President for Public Affairs and
Director, New York Office

BOARD OF EDUCATION OF THE CITY OF NEW YORK
1987 CHAPTER I SUMMER I.C.E. PROGRAM
321 East 96th Street, New York, NY 10128
212-369-8800

JOHN J. FERRANDINO,
Central Supervisor

ROBERT YURASITS,
Asst. Central Supervisor

August, 1987

Mr. Gary Pagar
American Boat Charter and
Builders, Inc.
17 Battery Place
New York, New York 10004

Dear Mr. Pagar:

Once again because of your efforts, the "Sail For Liberty's Children" program was a super success. It was a sensational experience for the New York City adolescents enrolled in the High School Summer I.C.E. Program.

The thiry adolescents who boarded the schooner Freedom daily and sailed down the East River through New York Harbor were treated to both an exciting experience and educational program which they will long remember. The overwhelming majority of our students never had a sailing experience before and your super crew, (Mark, Matt & Alberto) made it a pleasant and unforgettable adventure.

On behalf of Mr. Ferrandino, the Summer I.C.E. Program's Central Supervisor, the many students who shared this wonderful venture and myself, once again thanks!

I hope that we can work together again in the near future to provide exciting programs for our city's children.

Sincerely,

Joseph M. Varon

Joseph M. Varon

cc: Mr. John J. Ferrandino,
Central Supervisor

RECEIVED
AUG - 6 1987

New York Newsday
EDITION

TUESDAY, MAY 19 1987 • 25 CENTS

Inner-City Kids Sail Toward Liberty

NEW YORK DIARY

Dennis Duggan

When the schooner ~~Liberty~~ Freedom slipped gracefully alongside Pier 11 in lower Manhattan yesterday morning, it was a dream come to life for most of the inner-city schoolchildren from Queens waiting for their two-hour adventure.

Under a sun as bright as a newly minted copper penny, the 32 students cheered loudly when Capt. Mark Wilchusky yelled "all aboard." They listened attentively to Manhattan Borough President David Dinkins talk before the voyage about his life on the streets of a city that sometimes treats its children harshly.

"You are as good and as bright as any youngsters anywhere," he told the sixth-, seventh- and eighth-graders from IS 61 in the Corona section of Queens, where many of the city's newest immigrants have settled.

"When I was your age," said Dinkins, standing in the bow of the gaff-rigged vessel, "I sold shopping bags on the corner of Eighth Avenue and 125th Street in the heart of Harlem for two cents each. What I'm saying is that you can be anything you want if you believe in yourself."

Then the loaded 76-foot-long schooner glided into the city's busy harbor for the inaugural cruise of the "Sail for Liberty's Children," a city program, funded by businessmen, designed to stimulate students' interest in the harbor. The kids began talking to each other in accents and tongues from the four corners of the Earth.

"Where's the garbage boat?" one of them asked Joseph Varon, a teacher at IS 61, referring to the barge moored in Gravesend Bay off Brooklyn.

"We won't see it," replied Varon, a good-natured teacher with a deep interest in the environment who seized on the question to explain that "the world is not our sewer," and then, with a grimace, and pointing at the grease-stained water under the boat, asked, "Would you swim in that?"

"I wouldn't," said Fred Boah, 11, who arrived in New York two years ago from Ghana and who is a sixth-grader at IS 61.

"Me either," said Tamdji Ganga, 12, whose parents are from Chad and whose smile had the voltage of a Broadway sign.

Their teacher, Gerrie Schaed, who teaches English as a second language, explained that the students at IS 61 are a cosmopolitan bunch who speak languages of which most Americans have never heard. Most of the new immigrants are from the Caribbean, Latin America and Asia. The largest groups are the Dominicans, the Jamaicans and the Chinese.

Roosevelt Montas, 13, who arrived here from the Dominican Republic 18 months ago, said after a thoughtful pause that he liked his new home, and especially liked school, "because here we get to change rooms every 40 minutes. Back home you have to stay in the same room for the whole day.

"It is also easier to get things done here. When you want a driver's license back home you can stand in lines for days before you get one.

"But I still love Dominican food, especially rice and beans, but I am getting to enjoy the hot dogs here, too."

"What you see here is a miniature United Nations," said Varon, 37, who is also vice president of the Marine Education Association and who teaches special-education classes at IS 61.

Sure enough, during the next two hours I talked to Shahla Shirazi, 11, who tried to teach me some words in Urdu, which is the national language of Pakistan, and to Blessy John, 13, who spoke in an Indian dialect she said was known as Malaman. "It is spoken in the southeast part of India," said Blessy, who arrived in New York a few months ago.

At the Statue of Liberty, Varon told his students that "my parents came from Greece and Turkey and they came on boats like this, only it took them months to cross the ocean and they were so crowded that it isn't as much fun as this trip.

"When they saw this beautiful statue they knew they were finally here. But the story doesn't have a happy ending. My grandmother had to return to Greece because when she got to Ellis Island — over there — the doctors discovered she had conjunctivitis and at the time they had no cure for that so they sent her back.

"Many of your parents arrived here just like mine did," said Varon. "Can you tell me why they came to America?"

"Freedom!" yelled Rafael Pimentel.

"Better conditions," shouted Marlon Clark.

"Jobs," said Kenny Yeung.

Then the boat headed back to let the schoolchildren, who had arrived for their big voyage by subway, off for their return home.

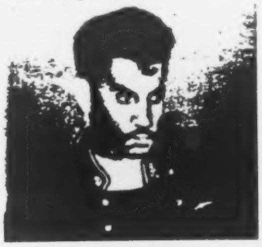
Gary Pagar, the 31-year-old chairman of Tribeca Holdings, which owns M.H. Lamston, the variety store chain, and the schooner, and who is footing the bill for this and 40 other such cruises this summer, said he hoped the trips would inspire some of the students to want to stay in school.

"I tell these kids to go for it. I did and I know that if you want something you have to work for it. This is great for us and for them, too. These are the kids who you see sitting on the piers wondering where boats like this are going and who's on them. Today they know."

NFAA 1986 CALENDAR OF EVENTS

April 4: Columbus, Indiana ARTSfest
High school teachers and students from Indiana, Kentucky and Ohio will attend performances and workshops given by former ARTS awardees from Indiana and Ohio: **Tina Decker**, ARTS '83; **Yolonda Jordan**, ARTS '85; **Anne Giffen**, ARTS '85; **Margaret Nelson**, ARTS '82; **Jane Templeton**, ARTS '80; **Brian Dynes**, ARTS '80; **Richard Hasler**, ARTS '84; **Kristi Nibbelin**, ARTS '85 and **Julia Spicher**, ARTS '81. The event is being co-sponsored by the Cummins Engine Foundation, the Indiana Department of Education and NFAA.

April 7: 1986 Los Angeles ARTSfest
1986 ARTS Awardees from Southern California will be honored at a special program hosted by local NFAA supporters and trustees. Two daytime assemblies will be presented to high school students and their teachers. A Camerata will take place in the Bel Age Hotel in the evening.



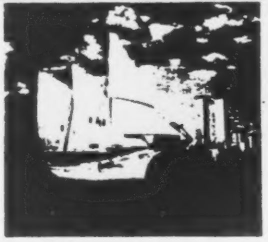
Self portrait by Carlos Rosado

April 7-14: New York Visual Art Exhibit
Bonwit Teller will display the works of **Kevin Berlin**, ARTS '83 and **Carlos Rosado**, ARTS '83 for one week in their Fifth Avenue store windows. NFAA Board Chairman **William S. Ruben** is hosting a Camerata on April 9 for New York area NFAA supporters.

Charles Cinnamon and Ms. Easterlin

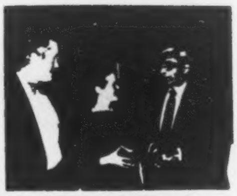
April 28: New Orleans Camerata
The first New Orleans Camerata at the home of **Ms. Mickey Easterling** will be highlighted by the appearance of 1986 ARTS Awardees from Louisiana.

May 1: New York ARTSfest '86
1985-86 ARTS Awardees from New York, New Jersey and Connecticut will be honored in a special event and performance at the University Club.



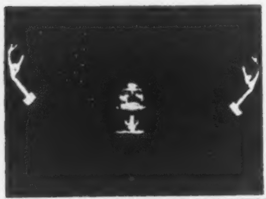
"Freedom"

May 20: "Freedom" New York Dinner Cruise
A dinner cruise aboard the classic schooner, "Freedom," has been donated by **Mr. and Mrs. Gary Pagar**. The dinner cruise around Manhattan, previewing the Statue of Liberty centenniel celebration is reserved for NFAA donors of $2,500 and above.



Eric Wentworth and Ansley Wallace, owners of Wentworth/Wallace Gallery in Washington, DC, with NFAA President Grant Beglarian. The Gallery will premiere the visual art works of 1986 Presidential Scholars in the Arts in June.

June 23-26: Washington, D.C. Presidential Scholars in the Arts Events
The 1986 Presidential Scholars in the Arts will perform Monday, June 23 at the Kennedy Center and be awarded at a White House ceremony, Thursday, June 26, among other honorary activities. NFAA supporters will be notified by mail once details are confirmed in mid-April.



National Foundation For Advancement of the Arts (NFAA)

The National Foundation For Advancement of the Arts is a national non-profit organization that gives cash grants to high school seniors who have demonstrated outstanding potential for achievement in the arts. NFAA in cooperation with the White House is also involved in the nomination of the Presidential Scholars in the Arts.

Gary S. Pagar
17 BATTERY PLACE • NEW YORK, NEW YORK 10004

July 18, 1988

Honorable Walter B. Jones
Chairman
Subcommittee on Merchant Marine, Room 531
House Annex 2
Washington, D.C. 20515

Dear Mr. Chairman:

Below please find our response to the additional questions submitted regarding H.R. 4624 by you in your letter of July 11, 1988:

1. How many passengers would you like to carry on the FREEDOM and where will it operate?

   --We wish to carry up to 49 passengers and will operate in coastwise service around New York Harbor and surrounding areas.

2. Are you aware of any opposition to H.R. 4624?

   --We are unaware of any opposition to this bill.

3. Has the Coast Guard made any preliminary examinations of the vessel as to its suitability to carry passengers?

   --Although we have encouraged the Coast Guard to do so, no preliminary examination has yet been done at the time of this writing.

4. Will you be able to comply with various Coast Guard requirements for the carriage of passengers?

   --Until the Coast Guard inspects our vessel we cannot know if we comply with their requirements. However, to the extent that we do not comply with any requirements, we are prepared to make any repairs or alterations necessary in order to comply.

Thank you for your continued attention to this legislation.

Sincerely,

Gary S. Pagar

Orange County
Marine Institute
24200 Dana Point Harbor Drive, Dana Point, California 92629
(714) 496-2274
(714) 831-3850

June 23, 1988

U. S. House of Representatives
Committee on Merchant Marine & Fisheries
Room 1334, Longworth House Office Building
Washington, D.C. 20515

Attn: Walter B. Jones, North Carolina, Chairman

Dear Congressman Jones:

On June 16, 1988 I testified before the Committee on Merchant Marine and Fisheries regarding H. R. 4627 (bill for relief of the vessel PILGRIM.) At that time, a question was raised as to safety and the structural integrity of the vessel. I would appreciate the opportunity to submit the following for the record:

As indicated in previous testimony, it is not our intent to seek documentation as a passenger carrying vessel, nor is it our intent to carry cargo. The PILGRIM is clearly not a "pleasure yacht," and the only other documentation available to us is as a vessel engaged in the coast-wise trade. Some of the confusion regarding safety and the structural integrity of the PILGRIM stems from the misconception that we intend to seek inspection as a passenger carrying vessel. Again, I state that categorically is not the case.

On October 13, 1987, Captain R. B. Franks of the Marine Inspection Division (Long Beach) wrote following a U. S. Coast Guard examination of the PILGRIM in dry dock. While noting that certification as a passenger carrying vessel would probably be cost prohibitive, he went on to say "This is not to say the vessel is patently unsafe or unsuitable for private use." (Exhibit A)

On February 18, 1988, Commander Larsen of the same Long Beach office wrote to local County officials and with regard to the earlier examination stated "We did not sight any manifestly unsafe conditions which would justify prohibiting the sailing of the vessel in an uninspected status." (Exhibit B)

The PILGRIM was hauled in 1985, 1986, 1987 and plans are underway for a 1988 haulout. In 1985, an expenditure of $42,080 was made to replace 240' of planking. A copy of survey recommendations along with verification of corrections are Exhibit C. In 1986, an expenditure of $12,583 took care of a number of minor corrections. No survey was done that year. In 1987, a second survey (Exhibit D) was done and the work recommended was completed for an expenditure of $13,260. It is of some importance to this discussion that the surveyor concluded "She (the PILGRIM) will be considered a good physical risk upon completion of the recommendations contained herein."

U. S. Coast Guard has been notified each time the PILGRIM has left her permanent mooring to go to sea. Heretofore, required safety equipment has been minimal:

1. Adequate fire fighting equipment and lifesaving equipment to meet the requirements for uninspected vessels,
2. Day shapes, navigation lights and sound producing devices to comply with Inland/International Navigation rules,
3. A means to monitor and discharge bilge seepage,
4. Competent crew members.

In addition to these U. S. Coast Guard requirements, a number of additions have been made to improve safety. These include:

5. Type I PFD with whistles and reflecting tape for all crew and guests.

6. Five life rafts with a total capacity for 36 persons. All rafts are inspected as required and three are equipped with hydrostatic release mechanisms,

7. The vessel carries five pumps with the following capacities:

12 v. bilge pump	20 gal./min.
120 v. bilge/fire pump	80 gal./min.
Two (2) hand bilge pumps	60-80 gal./min.
gasoline powered fire pump	110 gal./min.

8. Electronic gear includes:

   VHS radio and depth meter;
   to be installed
   radar and loran satallite navigation aid

9. A full crew complement is 23 persons. The Captain carries a U. S. Yacht Masters license up to 500 tons and a Panamanian unlimited license. WHile there is some variation due to crew rotation, the typical crew will carry at least two with a minimum 100 ton Ocean Operators license. On the crew roster also, is a professional "rigger" with Southwest Marine (L.A.), a college instructor in sailing and celestial navigation, and a merchant marine Z card carrier.

It is also worth noting that the PILGRIM is permanently moored eleven months out of each year and comes under the jurisdiction of County building and safety, health and fire agencies. Accordingly, the galley carries a permit (Exhibit E) for operation as a restaurant kitchen. The electrical system has been approved by the building department, and a comprehensive fire safety system has been installed.

I trust this will serve to allay any fears concerning safety and the structural integrity of the PILGRIM for the degree of at-sea time she receives and the specific use of the ship as a traveling museum exhibit.

Thank you.

Sincerely,

Stanley L. Cummings, Ph.D.
Executive Director

SLC:kra

enclsures (5)

cc: Congressman Ron Packard
Congressman Glenn Anderson
Willian Dysart

U.S. Department of Transportation
United States Coast Guard

Officer In Charge
Marine Inspection
LA/LB

165 North Pico Avenue
Long Beach, CA 90802
(213-499-5540)

16711
13 October 1987

Dr. Stanley Cummings
Executive Director
Orange County Marine Institute
24200 Dana Point Harbor Drive
Dana Point, CA 92629

Exhibit A

Subj: Sailing Vessel PILGRIM

Ref: (a) Your meeting of 9 September 1987 with CDR Larson
(b) My letter of 11 September 1987
(c) Drydock examination of PILGRIM, 16 September 1987

Dear Dr. Cummings:

The purpose of this letter is to communicate potential problems noted regarding possible future Coast Guard Inspection for Certification during our cursory examination of the PILGRIM when recently drydocked. A copy of the inspection notes made is enclosed for your information. I will also summarize what steps now seem appropriate in order proceed from this point ahead and solicit your response.

To begin, I recognize the survey of a vessel without the benefit of knowing its complete history might present questions which have answers we do not know. You should bear in mind my comments are based only on what was seen on 16 September.

External examination of the hull revealed significant hogging (estimated at 8 to 14 inches) which seemed to be boundaried by the forward and aft masts and, possibly, induced over the years by their being pulled down and held tightly by their rigging. The numerous verticle splits in the masts are evidence of compression stresses which have probably occurred as a result of this. The yard was in the process of "doubling" many of the deteriorated chain plates fastening mast rigging to the hull. On the stbd side some of the chain plate fastenings are pulled out one to two inches, indicating those fastenings are either wasted through or loose. There is also a separation between the exterior and interior stem.

The hull appears to consist of three-inch oak with mild steel fastenings. There was evidence of worm damage, mostly limited to plank seams, and evidence of substantial repair in the past. This conclusion is based on the presence of aged cement-like fill material. Whether past damage has been repaired or merely covered is unknown. A fracture approximately four inches long was found in the propeller hub.

The interior of the vessel is covered by planking from the keel to the deck. Framing and condition of the hull planks from the inside could not be evaluated without floor removal. Our experience with vessels of similar construction and vintage, however, is frequently the presence of rotted strength members--especially if there is inadequate natural ventilation. The PILGRIM is open throughout and lacks subdivision.

At this stage it is fair to say our examination was inconclusive and that a much more in-depth inspection would be appropriate to consider Coast Guard Certification. My educated guess is that to pursue Coast Guard Certification would be cost prohibitive--perhaps a conclusion you had arrived at some time ago. (This is not to say the vessel is patently unsafe or unsuitable for private use, but rather to report the standards to which vessels which engage in the carriage of passengers or Sailing Vessel School students can probably not be met by the PILGRIM.)

What remains (assuming you agree with this preliminary assessment) is the prospect of continuing your operations as you have conducted business in the past. I see no problem, from the Coast Guard's perspective, with your continued land-based operations. When permamently moored PILGRIM is legitimately out of a shipping and navigation status, considered by the Coast Guard to be substantially a land structure.

I assume, on the basis of local publicity, this years' Tall Ships Regatta is over and PILGRIM is back at her permament mooring at Dana Point. Before PILGRIM gets underway again I want the issues discussed in my letter to you dated 11 September 1987 settled. Specifically, PILGRIM is to be documented or registered. A determination of whether actual use of the vessel constitutes Coastwise Trade is to be obtained from Customs. Categorizing people on board as bona fide crew members or passengers must be resolved to the Coast Guard's satisfaction.

Please consider CDR Paul Larson, Chief of the Inspection Department, your point of contact and work with him to resolve these issues. His telephone number is 213-499-5540.

Sincerely,

R.B. Franks

R.B. FRANKS
Captain, U.S. Coast Guard
By Direction of the Officer
In Charge, Marine Inspection

encl: 1) Report of Inspection

Miles RT

Man Hours

REPORT OF NEW CONSTRUCTION or CONVERSION

Place of Inspection COMMERCIAL MARINE	Date 16 SEPT 87	Time Begun	Time Completed
Name of Vessel or Builder's Hull No. PILGRIM	Official No.	Gross Tons	Length 90.9
Route	Class PROSPECTIVE SAIL TRAINING VSL	Type(Steam, Motor, etc) AUX SAIL	
Owner's Name ORANGE COUNTY MARINE INST	Owner's Address 35502 DEL OBISPO DANA POINT CA 92629		
Builder's Name	Builder's Address		

REMARKS:

At vsl on ways accompanied by CDR Larson and in the presence of vsl rep (bosn) at above location, to conduct "courtesy" superficial drydock exam. Vsl is presently a permanently moored fixture in Dana Harbor. Vsl however does carry students on it's annual trek to drydock. Vsl's bottom appears to consist of 3" oak planks with mild steel spike fastenings. Vsl has a fwd & aft mast with a gaff rig. Toured bottom. Found numerous areas of worm damage most of which are located in plank seams. Was not able to determine extent of damage. Also noted numerous worm damage repairs with cement fill material. Of these many seem to be merely masking the damage. Discovered fracture (approx 4" long) in propeller hub. Observed severe hog (approx 8"-14") in keel located between two masts. Chain plates in deteriorated state. Yard attaching doublers at this time. Noticed that aftermost chain plates on stbd side ~~bottom~~ fastenings are pulled out approx 1"-2", indicating that fastening is either wasted thru or loose. Noted that exterior stem is seperated from interior stem (see diagram)

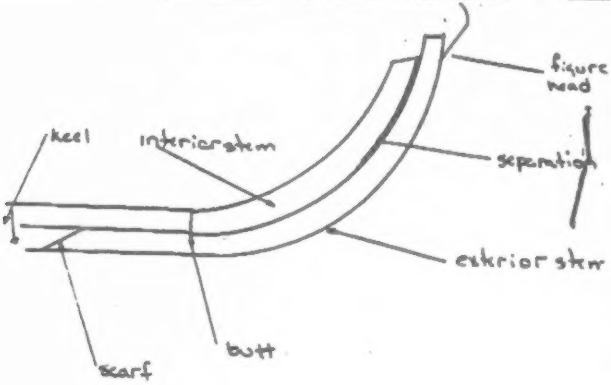
Signature of Inspector(s)

At first glance this does not appear to be a matter of concern since the exterior stem seems to be merely ornamental. However, a close inspection of the stem to keel joints reveals that the interior stem is butted to the keel ~~and~~ the exterior stem is scarfed into the keel, thereby transfering stresses & thus providing the stem strength.

Toured vsl interior. Vsl has keel to deck floors which, without floor removal, mates strength member inspection impossible. Vsl has no bulkheads & is open from stem to stern. No fastenings were removed. Systems were not examined.

Courtesy exam is inconclusive since all areas of the vsl were not examined. However, it appears that due to several obvious problems (hog, wasted chainplates, no subdivis the vessel will find it difficult if not impossible to conform to requlations.

MH 8.0 Steve L.
MET 10.0



U.S. Department
of Transportation
United States
Coast Guard

Officer In Charge
Marine Inspection
LA/LB

165 North Pico Avenue
Long Beach, CA 90802
(213) 499-5540

16711/PILGRIM
18 February 1988

David A. Russo
Supervisor, Lease Development
Environmental Management Agency
12 Civic Plaza, Rm. C-08
Santa Ana, CA 92702-4048

Exhibit 13

Dear Mr. Russo:

Thank you for inviting me to attend the County's meeting regarding the PILGRIM yesterday. It was interesting, from my perspective, to learn the history of Orange County Marine Institute and its utilization of PILGRIM from when first acquired to the present. I will address the Coast Guard's involvement in this letter and also answer other questions/concerns voiced to me during the meeting.

The Coast Guard communicated by letter to Dr. Cummings on 29 January 1982 that PILGRIM was considered permamently moored and "substantially a land structure." This is a status accorded vessels used as showboats, theaters, hotels, restaurants, museums, etc. The test for permanent mooring is that the lines be so rigged that they cannot be inadvertantly or accidentally cast off, are unlikely to break, and necessitate special effort (i.e., use of tools) to be released. The "land structure" declaration, from the Coast Guard's point of view, subjects the vessel to local civil safety codes.

On 26 July 1982 Dr. Cummings requested permission to take PILGRIM to a shipyard for hauling out and bottom work. Guidelines regarding permamently moored vessels allow occasional use for matters such as shipyard work, overhaul, location changes, etc. This request was granted with the understanding PILGRIM, when placed in navigation, would sail as a foreign documented vessel and be subject to regulations applicable to that operation. The issue of dignataries, Board members, and guests on board during the shipyard trip was also raised by Dr. Cummings. The Coast Guard agreed to this as long as the "guests" had not contributed time, money, or other consideration with an expressed or implied understanding that the contribution might result in a ride on the vessel. This answer was communicated by letter on 20 August 1982. I do not know what the vessel's schedule was over the next three years.

The Comanding Officer, Captain Janecek, and myself first became involved with PILGRIM when Captain Gage called to discuss last year's shipyard sojourn. In response I called Dr. Cummings, met with him on 9 September 1987, and discussed Coast Guard concerns.

He provided a copy of the letter he sent the Coast Guard outlining 1987 shipyard plans. Mailed previously and addressed to my predecessor, it had not been received. In viewing the paperwork Dr. Cummings had, it became apparent what he purported to be the vessel's foreign document was in actuality an International Tonnage Certificate showing the former owner and former name of the vessel. The Bill of Sale provided indicated the owner to be B.J.W. Expeditions, c/o Raymond W. Wallace, but the relationship between B.J.W. and Orange County Marine Institute was and remains unclear. This situation left Dr. Cummings with the task of either Registration by the State of California, or Documentation by the Coast Guard. Since the timing with respect to 1987 sailing plans was late, his letter regarding the schedule was not received (through no fault of his own) in timely fashion, and the situation no doubt was the same in past years, we agreed to the 1987 plans with the understanding the matter would be resolved before any 1988 voyaging. This year's schedule involves the planned retracing of Richard Henry Dana's calls on various ports up the coast.

Two other significant items were discussed during my meeting with Dr. Cummings relative to issues when PILGRIM is operated as a vessel--coastwise trade and service (whether commercial or non-commercial). Coastwise trade, generally speaking, is the transporation of passengers or merchandise between points embraced within U.S. coastwise laws. This particular legislation dates back to the early 1900's. It was and is intended to promote U.S. shipbuilding interests by specifying (with few exceptions) only U.S. built vessels may engage in coastwise trade. Service determinations are made by the Carriers and Rulings Branch of U.S. Customs. As a foreign built vessel PILGRIM is not privileged to engage in coastwise trade. In my view service of the PILGRIM (as a vessel) and the status of people on board is sufficiently ambiguous to indicate a ruling be obtained. This was communicated to Dr. Cummings. As of yet neither this issue nor the matter of State Registration or Coast Guard Documentation has been resolved.

When discussing PILGRIM's itinerary with Dr. Cummings last year I offered to preliminarily inspect the vessel while on drydock to assess the feasibility of upgrading for the purpose of Coast Guard Certification as a Sailing School Vessel. That was done on 16 September 1987. Although the exam was cursory, enough questions were raised regarding the vessel's structure to support an opinion that to upgrade the vessel would be economically unrealistic. We did not sight any manifestly unsafe conditions which would justify prohibiting the sailing of the vessel in an uninspected status. Dr. Cummings subsequently responded to our letter indicating we did not feel upgrading would be practical, stating he had arrived at that same conclusion earlier. He transmitted a copy of the Independent Surveyor's report (which is

8-26 to 10-2 one week in yard

proprietary information) prepared on the basis of examination during the same yard period. That report indicates PILGRIM "is presently in service as a sea adventure program/training vessel for young people operating over night out of Dana Point. . . ." It also lists several recommendations, including removal of a Coleman gas stove and servicing the fire extinguishers, indicating the vessel appears well suited for its intended use and would be considered a good risk upon completion of the listed recommendations.

The PILGRIM'S insurance coverage is split between two brokers. Hull and machinery coverage, which provides for physical damage to the vessel, is through Blue Water Marine Insurance (Patsy Ober, telephone 714-722-1228). The P & I (Protection and Indemnity) coverage, which provides for bodily injury and/or loss of life, is through Jay and Renfro, 333 Newport Beach Blvd., Newport Beach, CA 92663 (Pat Ratcliff, telephone 714-645-9000). Each insurer is aware of the nature of the Orange County Marine Institites' programs on board the PILGRIM. Ms. Ratliff mentioned the issuing company carefully reviews the marine surveyor reports to satisfy itself regarding condition and insurability of the vessel. She added her company has provided coverage for the PILGRIM since the vessel has been at Dana Point, has never had a loss, also provides general liability coverage for the Orange County Marine Institute, and that Dr. Cummings is safety-conscious and has a good reputation. I explained to Ms. Ober and Ms. Ratliff EMA's concerns as I understood them regarding evolution of PILGRIM'S use, particularly in the over-night mode, and possible egress of persons on board and access by firefighting personnel in the event of an emergency situation. Both indicated a willingness to discuss matters with you if you would like to call them.

PILGRIM'S anchorage location and the floating dock was also discussed at length during the meeting yesterday. The location of PILGRIM is in waters considered by the Coast Guard to be under County jurisdiction. The Port Operations branch of this office got peripherally involved with the floating dock when called last year by Mr. Tom Rossmiller, who inquired regarding Coast Guard jurisdiction. The U.S. Army Corps of Engineers is the appropriate federal regulatory agency--Dr. Cummings had initiated contact with that office on 4 June 1987.

The losses of two vessels similiar to PILGRIM were items of interest also discussed at the meeting. The PRIDE OF BALTIMORE was built as a replica of the BALTIMORE CLIPPER in 1976. Employed as a "Goodwill Ambassador" for the City of Baltimore, the vessel logged approximately 150,000 miles in its first nine years of service. PRIDE OF BALTIMORE was "uninspected." On 11 May 1986 the vessel departed St. Johns, U.S. Virgin Islands, enroute to Chesapeake Bay. Winds picked up the third day. By the morning of 14 May winds ranged from 25 - 28 knots. By 11:15 AM winds were at 30 knots. Just before noon an "unbelievable" steady gust of high-velocity wind, estimated at 70 - 80 knots which was described as blowing the top off the waves, struck. PRIDE heeled severely and flooded through the open aft companionway hatch. There were no watertight bulkheads to provide subdivision. Within minutes the vessel sank in 17,000 feet of water.

On 15 January 1988 the Three-masted Barkentine REGINA MARIS sank, while unmanned, at a shipyard dock in Boston. A 144-foot Tallship, REGINA MARIS was built in Denmark in 1908 as a cargo vessel. Ownership changed several times before the vessel ended up in Boston. At one time billed as "America's only Square-rigged Research Ship," Coast Guard inspection was sought in the past but never completed. Two years ago plans were made to convert the vessel to a floating restaurant for 50 to 80 people. The vessel was at the shipyard for work before entering restaurant service, and had been laid-up before the last movement. The vessel remains on the bottom. As of the present divers have not been sent down and the cause of the sinking remains unknown.

I will advise you of future contact I have with Dr. Cummings and make sure you remain apprised of the Coast Guard's position. Please call on me at any time if I may be of assistance.

Sincerely,

PAUL J. LARSON
Commander, U.S. Coast Guard
Chief, Inspection Department
By Direction of the Officer
In Charge, Marine Inspection

Encl:
(1) Capt. J.H. Guest letter of 20 August 1982
(2) Dr. Cummings letter of 12 December 1984
(3) Commander J.H. Oliver letter of 24 January 1985
(4) Dr. Cummings letter of 4 June 1987
(5) Dr. Cummings letter of 6 August 1987
(6) Capt. R.B. Franks letter of 11 September 1987
(7) Inspection Report, PILGRIM, 16 September 1987
(8) Capt. R.B. Franks letter of 13 October 1987
(9) Dr. Cummings letter of 22 October 1987
(10) Dr. Cummings letter of 22 January 1988
(11) My letter of 17 February 1988
(12) Loss of the PRIDE OF BALTIMORE Article
(13) CG Marine Safety Manual, Vol. III, pgs. 10-26 & 10-27

Copy (w/o encl) to Pat Ratliff

Exhibit C

Bill Steel, Incorporated
MARINE SURVEYORS
920 NORTH AVALON BOULEVARD
WILMINGTON, CALIFORNIA 90744
(213) 835-7139

7 October 1985

Orange County Marine Institute
P.O. Box 68
Dana Point, California 92629

Attention: Stanley L. Cummings

RE: VESSEL "PILGRIM"
OFFICIAL NO. E420
HULL BOTTOM SURVEY

Dear Mr. Cummings:

This is to certify that on 10 September 1985, at your request, the undersigned marine surveyor attended onboard the captioned vessel, a 1945 built (1974 rebuilt) 98' diesel auxiliary brig "Pilgrim" replica, of planked wood hull construction, while drydocked at Al Larson Boat Shop, Berth 214, Terminal Island, California. The purpose for attending onboard the vessel was to survey the vessel's underwater body and fittings.

The following information pertaining to the hull bottom is hereby provided:

Propeller:	60" diameter, 2 bladed bronze variable pitch propeller.
Propeller shaft:	4-1/2" diameter steel shaft.
Rudder:	Welded hollow steel plate on base bearing.
Approximate draft:	9'

From inspection in accessible areas the following recommendations were made:

1. Renew zincs - wasted.

2. Repair hull bottom - excessive marine borer damage in hull bottom planks, garboard planks, hull bottom plank and plank butt seams, garboard plank butt seams, keel rabbet seams, horn timber and keel deadwood. Suggest sandblasting hull bottom and keel deadwood to bare wood, crop out and repair all areas 20%, or greater, of hull bottom plank thickness (estimated at 3") and scarf in wood sections in horn timber and keel deadwood. Burn and fill areas less than 20% deep of hull bottom plank thickness.

3. Recaulk all open hull bottom plank, plank butt seams and keel rabbet seams.

4. Check hull bottom plank fastenings in way of plank removals and refasten hull bottom planks as necessary.

continued

5. Disassemble, clean and lap all thru-hull valves below waterline.

6. Repair or renew aft chain plates - suggest sandblast chain plates to bare metal to determine true condition - repair or renew as necessary.

Notes:
  a. Check and repair keel worm shoe and hull bottom planks in way of keel and bilge blocks.
  b. Vessel hogged - suggest installing new worm shoe.
  c. At next drydock period:
    1. Remove rudder - check pintle bearing and renew as necessary.
    2. Drop upper rudder stock for inspection of rudder stock and rudder tube - repair as necessary.
    3. Remove propeller to shop for inspection and repair propeller as necessary.
    4. Remove propeller tailshaft for inspection at journal areas - repair as necessary.
    5. Check stern bearing and renew bearing if wear exceeds .120".
    6. Check stern tube and repair as necessary.
    7. See recommendations dated 6 February 1985.

  d. Former repairs noted - various additional hull bottom planks and plank seams cement patched - although the actual thickness of the cement is not known the cement appears firm and in good order at this time.

The undersigned marine surveyor re-attended onboard the captioned vessel on various dates through 4 October 1985. The status of the recommendations outlined above were found as follows:

1. Done.
2. Done - approximately 300 lineal feet of hull bottom planking was replaced.
3. Done - various.
4. Done.
5. Reported done.
6. Not done - the repair or renewal of the port and starboard aft chain plates are reportedly to be renewed after the vessel has been launched and returned to her berthing facility.

Vessel was on drydock for the repair, as outlined above, from 9 September 1985 to and including 4 October 1985.

It is recommended that water ingress be monitored on a regular basis and the vessel be dewatered as necessary and that the vessel be re-drydocked in six months, or before, for recaulking of any hull bottom plank seams that may continue to leak. Beyond that the vessel should be drydocked on an annual basis.

Very truly yours,
BILL STEEL, INCORPORATED

William W. Steel
Marine Surveyor

WWS:cr

Bill Steel, Incorporated

REPORT OF SURVEY
- continued -

Vessel "PILGRIM" -3- Date 17 September 1987

R E M A R K S
- continued -

9. Hydrostatically test air receiver to 1-1/2 times working pressure.

10. Prove lube oil tank to be free of leaks - suspect.

11. Make gray/black water tank clean-out/inspection plate watertight - loose.

12. Have the untagged portable fire extinguishers checked and tagged by an authorized agency.

13. Have the life rafts checked and tagged by an authorized agency - providing rafts have not been tagged within last twelve months.

Notes:

a. Considerable recaulking of hull bottom plank and plank butt seams this drydock period.
b. Rudder removed.
c. Hull bottom repairs noted - i.e. new hull bottom planks installed.
d. Various port hull topside plank seams recaulked this drydock period.
e. Variable pitch propeller partially disassembled this drydock period.
f. Suggest installing bilge and engine alarms.
g. Suggest installing air compressor.
h. Intermediate transom guard rail being installed this drydock period.
i. Vessel registration papers not sighted.
j. Vessel is hogged - not considered serious at this time.
k. Suggest cleaning bilges.
l. New steel straps are being welded over port and starboard aft chainplates.
m. Various areas of soft wood were found in the vessel's superstructure, bulwarks, bulwark stanchions, main and poop deck covering boards, etc. Soft areas have been repaired with "Dutchmen" (wood inserts) or an epoxy like material. Repaired areas appear to be in satisfactory condition at this time.
n. Vessel's main royal sail and yard removed and stored below decks at this survey period.

This Report of Survey done for the exclusive use of Orange County Marine Institute.

ADMIRALTY MARINE SURVEYORS

William W. Steel

William W. Steel
Marine Surveyor

9/22/87
cjr

REPORT OF SURVEY
- continued -

Vessel "PILGRIM" -2- **Date 17 September 1987**

R E M A R K S

This is a former Danish Baltic trading schooner which has been converted in the fashion of the "Pilgrim", a vessel made famous by Richard Henry Dana in his story "Two Years Before The mast", written in the early 1800's. The original hull was obtained in Denmark and was taken to Portugal were it was converted to its present type/style vessel, in 1973-1974. Modifications made in Portugal include: installation of false clipper bow, transom stern, and rigging of vessel as a 19th Century type brig with bow sprit and jib boom, and three part fore and main masts, each with fore yards, and gaff main spanker and fore spencer. Modifications are to good marine standards.

Vessel is heavily built with carvel planking over 6" x 6" to 6" x 14" transverse double flitch Scandinavian oak frames, large knees, iron re-inforcements, and heavy ceilings. Her present hull layout includes: chain locker forepeak, foce'le with port and starboard single berths therein, forward berthing comparment with four single berths each side and pantry/ballast water tank enclosure therein, step down to main hold with two Mansfield enclosed chemical heads and storage locker starboard, and storage locker port, port and starboard settee berths - three each side, and port and starboard enclosed cabins with upper and lower single berths each therein, bulkhead, engine room, bulkhead, and afterguard or captain's quarters with navigation table and cabinetry port and an enclosed head to starboard, port and starboard hanging lockers, and double berth port and single berth starboard. Stern windows are installed in the aft cabin. The helm is controlled from a pilot wheel atop the popp deck aft.

Actual condition of the engine, sails, electrical, electronic, accessory equipment and conditions aloft were not determined. The propulsion engine, a B & W Alpha, diesel, 2 cylinder, raw water cooled engine, was reportedly given a major overhaul in August 1987. The vessel, machinery and equipment, including deck hardware, standing and running rigging, etc. appeared to be in above average condition at this time.

In addition to that listed above, the following gear and equipment was found onboard: bulwarks around the main deck, life rails on stanchions around the poop deck, two Jim Buoy 30" diameter life rings, life preserver jackets, canister horns, EPIRB, emergency flares, fog bell, Simplex fire alarm system, crew safety harnesses, inclinometer, 4" clock and barometer, mast shroud deadeyes, fife rails and belying pins, wood radial type stern davits, bench type vise, wood boat hook, sail lazy jacks, protective hatch and wheel covers, two hammocks, fenders, etc.

Vessel is presently in service as a sea adventure program/training vessel for young people operating over night out of Dana Point Harbor, Dana Point, California.

Vessel appears well suited for such use. She will be considered a good physical risk upon completion of the recommendations contained herein.

From inspection in accessible areas the following recommendations are made:

1. Renew zincs - wasting.
2. Repair marine borer damage in garboard plank and in keel rabbet seam at starboard side forward and aft - indicated.
3. Disassemble, clean, and lubricate sea valves.
4. Check propulsion engine alignment after launching and align as necessary.
5. Fill and fair open keel deadwood - worm shoe joint at port side forward - indicated.
6. Insulate lag the auxiliary engine exhaust piping from engine manifold to water cooling jacket inlet and compressed air transfer pipe at propulsion engine.
7. Install safety guard shroud over exposed propulsion engine driven water cooling-circulating pump belt.
8. Remove the Coleman type gasoline burning camp stove from vessel.

continued

BILL STEEL, INCORPORATED
MARINE SURVEYORS

[illegible] NO. AVALON BLVD.
WILMINGTON, CALIFORNIA
90744

REPORT OF SURVEY

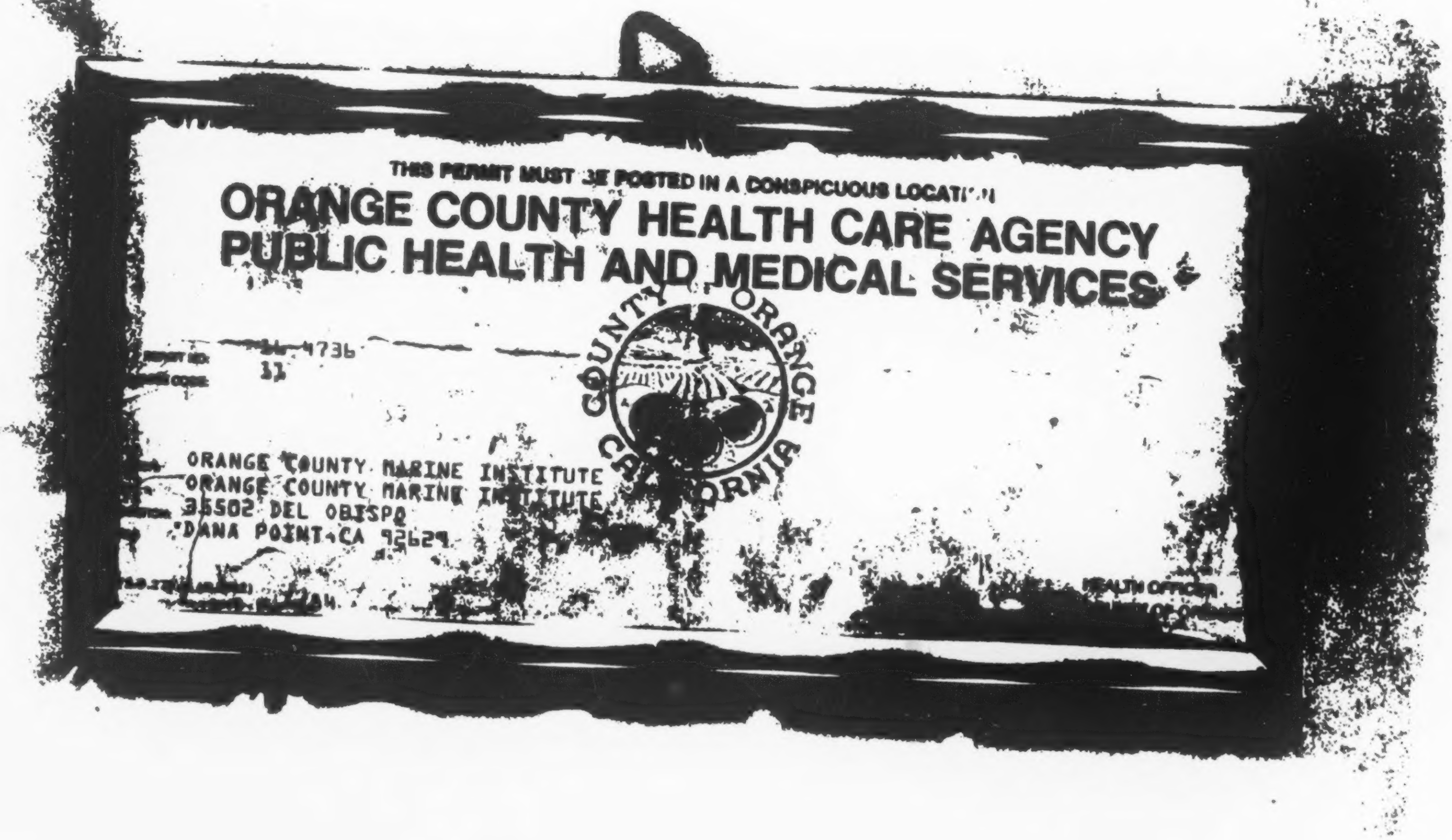
ATTENTION
This survey report constitutes only a statement of our opinion based on the conditions we found and is not a warranty of the condition of the vessel. It is issued subject to the conditions that we and the individual surveyor are under no circumstances to be held responsible for any error, omission, default, negligence, misrepresentation, or misstatement in this report. Particulars were obtained from sources available at time of survey. They are believed to be reasonably correct but are not guaranteed.

Name "PILGRIM" Former Names "JOAL"
Official No E420 Home Port Dana Point Harbor, Dana Point, California
Owner Orange County Marine Institute Address P.O. Box 68, Dana Point, California 92629
Type diesel auxiliary brig "Pilgrim" replica Accommodations 3 afterguard, 4 officers, 14 +2 crew
HULL: Designer Knud Hansen & Ray Wallace
Built By A. Nielsen(rebuilt by Ray Wallace) At Holbaek, Skibavarft, Denmark Year 1945
Dimensions: L.O.A. approx. 98'2" W.L.L. Reg. L. -- Beam 23'1" Draft Depth 10'6" Tonnage: Gross 99 Net 64
Speed of Boat est. 8.5 - 9.5 knots under power Cruising Range extended, sail and power
Construction wood, round bilge, transom Fastenings iron, galvanized
Planking carvel - 3" thick (5" thick garboard); 2"-3" thick ceilings
Frames 6"x6" & 6"x14" double flitch scandinavian oak
Decking 2½" scandinavian pine planking over

MACHINERY:
Engine B & W Alpha Model 403V No. 6515
Year est. 1952 Type diesel, 3 cylinder, raw water cooled Horsepower est. 200
Auxiliaries, Pumps, etc. Kohler diesel est. 20KW-120V AC generator unit; Lewco model "2420-A" 24V mounted and Schumacher 12V portable battery chargers; electric fresh water pressure system with electric hot water heater; Briggs and Stratton gasoline portable emergency "handy billy" pump; Rule "Heavy Duty" electric automatic bilge pump; two large deck mounted diaphragm type hand operated bilge pumps; mounted hand operated fuel transfer pump; electric sanitary-sewage tank discharge pump;
Engine room and fuel tank ventilation natural Exhaust dry
Flame Arrester diesel Carburetor drip pan diesel
Propeller 60" diameter 2 bladed bronze variable pitch with 1½" steel shaft
Rudder welded hollow steel plate on base bearing;
LIGHTING SYSTEM: 12 & 24V DC, 110V AC & kerosene Batteries 2-12V(1-24V bank) & 1-12 volt
Wiring non metallic sheathed and conduit with switch boards and circuit breaker distribution panels Condition app. sat.
TANKS: 1 fuel day tank & 1 lube oil tank; 2 s/steel ballast/wash down water tanks in**
Type of Fuel diesel No. of Tanks 2 Material coated steel Capacity 1,400 gals. est
Located engine room wings Vented to atmosphere Filling Lines to deck
Water Tanks: No. 2 Material cement(discont'd) Location forward bilge Capacity est. 1,000 gals.
BALLAST inside Inside lead, rock, & iron weights Outside (keel/skeg)
SAILS mainmast: Main Royal, main t'gallant, main topsail, mainsail, and spanker; Foremast: fore Royal, fore t'gallant, fore topsail, foresail & spencer; flying jib, jib, & forestaysail/ /of cotton bent on;

DECK EQUIPMENT:
Winches hand powered iron dual anchor capstans and wildcats on iron frame; numerous double and single purchase blocks
Anchors, Line & Chain: one kedge black iron at starboard forward cathead & one Danforth galvanized at port cathead; quantities 1-3/8" & 7/8" stud link black iron & 3/4" open link galvanized chai
Spars pine, fir - coated Standing Rigging galv. wire rope & synthetic Condition app. sat.
Fittings iron, wood, and brazz Running Rigging manila line Condition like new
FIRE EQUIPMENT: Extinguishers 2-5# & 2-10# dry chemical checked & tagged 15 April 1987
CO_2 Fire System electric spray Covering engine room and cabin Manual yes Automatic yes
GALLEY: Range 4 burner; Toastmaster oven Fuel electric Surroundings Protected app. sat.
triple stainless steel snks; refrigerator
COMPASS: Number 2 Type liquid magnetic spherical "Sestrel" Size 5",2½" Last Adjusted --
RADIO EQUIPMENT: Uniden "President MC-480" VHF radiotelephone (s/n 73001187)
Call Letters --
Direction Finder none - hand bearing compass and Pelorus onboard;
Radar --
Depth Sounder: installing transducer this drydock period;
TENDERS 15' plywood long boat, 10; molded fiberglass dinghy, 3 Avon 8 person & 2 Viking 12 / /person encapsulated inflatable life rafts.
SURVEYED: ~~XXXX~~ on Drydock 17 September 1987 @ Commercial Marine Service, Terminal Island, CA
By Request of Orange County Marine Institute P.O. Nox 68, Dana Point, California 92629 Attn: Stan/ /Cummings
EST. VALUES: Replacement $1,200,000.00 Market $325,000.00
Built by con't: rebuilt: Portugal 1973-1974.
Tanks con't: focs'le enclosure; 1 fiberglass combination black and gray water tank.
Compass con't: Airguide Telltale compass. CONTINUED

Exhibit D



THIS PERMIT MUST BE POSTED IN A CONSPICUOUS LOCATION

ORANGE COUNTY HEALTH CARE AGENCY
PUBLIC HEALTH AND MEDICAL SERVICES

[illegible] 4736
[illegible] 11

ORANGE COUNTY MARINE INSTITUTE
ORANGE COUNTY MARINE INSTITUTE
35502 DEL OBISPO
DANA POINT, CA 92629

HEALTH OFFICER

MILLER
ENTERPRISES

1111 Third Avenue West, Suite 200
Bradenton, FL 33505
(813) 748-3433

July 26, 1988

Subcommittee on Merchant Marine
Room 531, House Annex 2
Washington, D.C. 20515

RE: Coastwise Trading or Fisheries Privileges
regarding the vessel "ENCORE"

Gentlemen:

In response to additional questions submitted by The Honorable Walter B. Jones, the answers to these specific questions are as follows:

1. How many passengers would you carry on the ENCORE? 6
2. Has the Coast Guard ever examined this vessel for inspection and certification? We have had auxiliary Coast Guard inspections.
3. Please tell us what you know about the sold-foreign issue. We were not at all aware that the ENCORE had previously been sold-foreign. At the time we purchased this vessel, it was in foreclosure. The previous owner to that had registered it under U.S. registration. We first were made aware that it had been sold foreign about one week prior to the hearing on June 16, 1988.
4. Did any of the documents you saw when you were negotiating with the Goldome Savings and Loan Association to buy the ENCORE give you any indication that the vessel had a Japanese hull? No, none of the documents stated this.
5. What condition is the vessel in? The ENCORE is in excellent condition. We have spent considerable amounts of monies to have new Detroit diesel engines put in, as well as extensive cosmetic reparations to the vessel.
6. Where is the ENCORE at the present time, and what is she doing? Currently, the ENCORE is cruising the Caribbean. My brother, my sister and I have spent time vacationing aboard her during this summer.

Sincerely yours,

C. Donald Miller, Jr.
President

CDM,Jr:jmw

cc: Congressman Andy Ireland

River Oaks Condominium • The Barnett Center • The Pier Restaurant • The Courtyard Retirement Residence • City Yacht Basin
Riverview Center • Don Miller Development Corporation

PREPARED STATEMENT OF RICHARD R. ROBERTS ON BEHALF OF PATRICIA A. AND GEORGE WILLIAM BOLLING, III, SOUTH SEAS CHARTER SERVICE BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE, 14 JUNE 1988

Mr. Chairman, distinguished Members of the Subcommittee, I appreciate the opportunity to appear before you today on behalf of Patricia A. Bolling and George William Bolling, III, the sole owners of South Seas Charter Services of Marathon Key, Florida in reference to their request to obtain the documentation of the vessel Albert for use in coastwise trade as provided in 46 USC, Section 67.19-7.

My name is Richard R. Roberts, my residence is 1650 Cedar Lane in Shadyside, Maryland. The partners in South Seas Charter Services, have requested that I present this testimony in their behalf. The Bollings have provided me with all of the following information and have been informed of both the nature and content of this testimony. Having registered with the Clerk of the House and the Secretary of the Senate as representing South Seas Charter Services, I respectfully submit this testimony.

In addition to my capacity as their representative, I hold a United States Coast Guard license to operate a vessel for hire on the Inland Waterways, Great Lakes, and Western Rivers. My current vessel, the Mary A., is documented for coastwise trade, #502396. I am not an attorney, but appear instead as someone with experience in both the legislative process and the operation of charter vessels.

PURPOSE AND EFFECT OF THE LEGISLATION

The purpose of this section of the bill is to permit the vessel Albert to engage in coastwise trade, specifically to carry charter passengers. The aforementioned owners of the vessel are United States Citizens residing in Marathon Key, Florida and are the sole partners operating the company South Seas Charter Services.

Over the past twenty or so years, the Bollings have purchased a variety of vessels ranging from forty (40) feet in length to one hundred and twenty (120) feet in length, refit them for private service, and sell them.

The owners of the vessel Albert do not seek to make any substantive changes in law and do not seek relief from any other aspects of the law, including those pertaining to the required inspection of the vessel or other operational, navigational or safety standards.

Passage of this section of the bill is revenue neutral in that it will not require the expenditure of public money at any level, Federal, state, or municipal. Nor will the bill contribute in any manner to a deficit balance of payments in trade or have any inflationary effect on the economy.

This portion of the bill seeks only limited relief for the owners of the specific vessel Albert, USCG Doc. #605923 in order to allow the vessel to engage in coastwise trade for the purposes of providing charter services to no more than eighteen passengers per voyage.

The owners of the vessel seek only to engage in the operation of small charter services or sell the vessel to an individual or company who intends to engage in similar pursuits. They do not seek to engage in any such ventures that would interfere or compete with the traditional activities of the U.S. maritime industry or trades outside of the limitations described. Notwithstanding 46 USC Section 833, the appropriate governmental agencies will retain full regulatory powers over the conduct and operation of the vessel Albert and any other such conditions as required by law..

INTENDED USE OF THE VESSEL

The owners of the Albert purchased the vessel in 1985 with the intent of refitting her for small cruise parties and sport diving parties. Originally built and operated as a sea rescue vessel for the Icelandic Coast Guard, the Albert has been refitted to include eight (8) staterooms and carry eighteen (18) passengers.

In the course of refitting the Albert, the Bollings invested almost twice the purchase price of the vessel in the refitting, used American ship yards and marinas, American labor, and purchased all their materials and equipment from U.S. suppliers. Beginning with her refitting in 1985, the Bollings refurbished state rooms and the galley; installed new pumps, wiring, and navigation equipment; improved the air conditioning and ventilation systems; rebuilt the generators, the windless, and the deisel engine. They added new safety equipment including life boats, and made other substantial improvements in the vessel to enhance its safety, seaworthiness, and comfort for a limited number of passengers.

CHAIN OF OWNERSHIP AND VESSEL DESCRIPTION

The Albert was built in Reykjavik, Iceland in 1956 for use as a sea rescue and fisheries enforcement vessel and used in that service by the Icelandic Coast Guard. Her hull is made of steel and reinforced for ice navigation. She is currently documented by the United States Coast Guard at one hundred and eighty eight (188) gross tons and twenty eight (28) net tons. Her length at the water line is one hundred and eleven point eight (111.8) feet, her beam is twenty three (23) feet, and her draft is nine point seven (9.7) feet. She is powered by deisel engine.

Prior to being purchased by the Bollings, the Albert sailed under the United States flag under the command of Captain Siguard Thorsteinsson of Salisbury Maryland and was operated by Oceans Unlimited, Inc., a company incorporated in the Commonwealth of Pennsylvania. The United States Coast Guard issued a Certificate of Registry designating her service as "Miscellaneous (Research Vessel)". During that time, the Albert was used as an oceanographic research vessel.

In 1985, the Albert was purchased by the Bollings for the purpose of refitting her as a cruising yacht and dive charter boat. Her combination of range, comfort, and seaworthiness was, in their experienced opinion, ideal for charter use by twelve (12) to (18) passengers.

GOOD FAITH EFFORT

Based on their past experience with the yacht Puritan that they had refitted and sold in between 1972 and 1973, the Bollings unfortunately assumed that even though the Albert was of foriegn origins, the fact that she now had a United States Coast Guard Certificate of Register, sailed under the American flag, and was listed as an inspected vessel, would permit them to operate the Albert under her miscellaneous research status pending redocumentation for coastwise trade.

The reason for this honest mistake was their experience in redocumenting the yacht Puritan that had lost its coastwise trade status after having been in foreign ownership prior to their purchasing it. Until the Puritan, their experience had been primarily with pleasure yachts of American construction with an unbroken chain of ownership by United States citizens.

On learning that the Puritan had lost her coastwise trade status due to prior foriegn ownership, the Bollings spent 1972 and 1973 in a substantial effort to determine if the problem could be resolved. They were fortunate to learn, after much effort, that because the Puritan had been built in an American yard prior to the effective date of amendments to the Act governing coastwise trade, that she could be granted coastwise trade status through established administrative procedures. After meeting the requirements of the administrative procedures, they received coastwise trade status for the Puritan, operated her for charter and subsequently sold the vessel.

When they purchased the Albert in 1985, some twelve years and several other vessels later, they considered the fact that she was a foreign bottom but was now in service under a U.S. Coast Guard Certificate of Registry. In what may have been a naive and unsophisticated, but never the less good faith assumption that the Albert could continue in U.S. trade, they purchased the vessel.

Following the purchase, they registered the transaction and new ownership and requested that the Certificate of Registration be renewed. They were subsequentially advised by Sharon Chadwick of Sharon Chadwick's Documentation Service in Fort Lauderdale, Florida that unknown to them, Public Law 96-594 had been changed. According to an undated memorandum provided to them, item five (5) stated, "The trade endorsements (Section 16 of Certificate of Documentation) are limited to the following: COASTWISE, FISHERY, REGISTRY, GREAT LAKES, PLEASURE. The Certificate of Documentation will no longer show the service of the vessel."

During the period in which they were submitting their reqeuwst for documentation, Mr. Bolling was incapacitated with a ruptured disc in the vertebrae of his neck and was confined to his bed for a number of weeks, which by late September required surgery. With one of the two partners incapacitated by illness and still remembering the experience with the Puritan, they accepted the highly restrictive status of documentation for pleasure only despite the noted restrictions under item 8 of the Certificat of Documentation, "NO COASTWISE OR GREAT LAKES LICENSE (1)(3)(4)(5)" and "NO FISHERY LICENSE (1). Given the uncertain nature of Mr. Bolling's illness, they felt that they should take the easiest course to documentation and pursue a similar route to the one they used on the Puritan once he recovered.

With the Alberts' past service as an oceanographic research vessel under the U.S. flag and the fact that she had been an inspected vessel with a U.S. Coast Guard Certificate of Registry, they were confident that if they were willing to accept the restrictions on use in fisheries or other commercial pursuits that they could find similar administrative procedures to obtain coastwise trade status for charter service.

They were unaware of the distinction between a vessel built in the United States that lost coastwise status due to foriegn ownership, and a vessel built in a foriegn country and operated by U.S. citizens under restrictive status.

HARDSHIP

Upon learning that they could not obtain coastwise status for the Albert, they explored other options by which the vessel could be legally used in the charter trade. It appeared that the only option open to them was to engage in demise charters, commonly known as "bare boat" charters. However, the vast majority of vessels engaged in demise charters are generally of a much smaller and infinitely simpler nature, generally in the thirty (30) to sixty (60) foot category, with tonnage ranging from five (5) to sixty (60) tons, and easily handled by experienced amateur yachtsmen.

The Albert, at one hundred and eighteen (118) feet and close to two hundred (200) tons, requires a skilled captain, an engineer, and a small crew for safe operation. This left the Bollings with a severly limited market for charters and virtually eliminated her marketability to prospective buyers.

In a good faith effort to operate the vessel within the confines of the law during the three years in which they have been refitting the Albert, they have only been able to derive revenues on two occasions. In 1987, they were able to lease the vessel to a major motion picture studio for one week as a set for a movie and the first of this year they were able to lease the Albert as a pleasure diving vessel outside of U.S. waters for a four month period.

Because of the restricted status of the vessel, they have only been able to derive revenues during seventeen (17) of the one hundred and thirty six (136) weeks since the vessel was redocumented. That translates to deriving income only twelve and a half (12.5) percent of the time they have had the vessel.

To compound their financial hardship, the inability to engage in any revenue generating enterprise other than limited demise charters, makes the Albert undesirable to potential buyers. On several occasions, the Bollings have negotiated with a prospective buyer only to have the negotiations break off when the question of the commercial value of the vessel is raised.

SUMMARY

In summary, the Bollings are simply seeking limited relief through 46 USC, Section 67.19-7 that grants a citizen the right to seek a legislative solution to the restriction imposed on a foriegn bottom owned by U.S. citizens by 46 USC, Section 833. Their request is limited to obtaining coastwise status for a single vessel, the Albert, and their intent is soley to permit the Albert to engage in charter activities either by them or by a subsequent owner.

The vessel, with its complete refitting, its hull reinforced for ice service, its history as a sea rescue vessel in Arctic and sub Arctic waters, and its subsequent service as an oceanographic research vessel under the United States flag should provide full assurances the Albert is eminently qualified to submit to U.S. Coast Guard inspection for limited passenger service.

Furthermore, with its state room capacity limiting it to eighteen (18) passengers, its overall design as a yacht, its net tonnage which renders it unsuitable for cargo or fisheries trade, and the owners clearly stated intent that it be used or sold for use in limited charter service, the Congress should be reassured that the Albert poses no threat or competition to our domestic maritime industry or the trades servicing that industry.

The nature of the vessel, and the narrow language of the proposed legislation makes it obvious that their request, will not result in any substantive change in existing law, submits the specific vessel to all navigational, operational, and safety requirements, is revenue neutral, and has no inflationary effect. Should the Congress in its wisdom pass this legislation into law, neither the nation nor its citizens will be subject to any government expenditures, inflationary impact, or any other economic dislocations.

The owners of the Albert purchased, refitted, and offered the Albert for sale in good faith. They were unaware of the intricate nature of documentation requirements. After having successful resolved what appeared to them to be a very similar problem with the Puritan many years before, they were chagrined and suprised to learn of the narrow technical differences between the construction and use of the vessels. These differences left them with no choice but to seek a legislative remedy of which they had been totally unaware at the time of purchase. They merely ask that the Congress allow them to exercise their rights as provided in the law to seek relief from economic hardship imposed by 46 USC, Section 833.

Any questions that the committee may have concerning this testimony, or any additional information requested by the committee will be provided to the best of my ability in the most timely fashion possible. On behalf of the Bollings, and myself, I extend our thanks and appreciation to the Members of the Committee and their staff.

RESPONSE BY
RICHARD R. ROBERTS
of
ROBERTS & CO.
TO ADDITIONAL QUESTIONS
AS REQUESTED BY
THE HONORABLE WALTER B. JONES
CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE
ON
COASTWISE TRADING OR FISHERIES PRIVILEGES
JULY 18, 1988

1. How many passengers would you carry on the ALBERT?

As indicated in my written testimony submitted June 14, 1988, the ALBERT was originally built with stateroom space to accomodate a maximum of 18 passengers with additional limited space for crews quarters. Because of her configuration, the refitting provides for 8 staterooms and limited crews quarters. Therefore, she still would carry a maximum of 16 to 18 passengers.

2. What is her intended area of operations?

Because the primary activity of South Seas Charter Service is the refitting and sale of yachts, and due to the fact that the ALBERT can not at this time be documented for coastwise trade and therefore has no immediate contractual obligation to be purchased, the intended area of operations can not be narrowly defined.

On the other hand, should it take some time to find a bona fide buyer, South Seas Charter Service would most likely charter out of their base of operations in Marathon Key, Florida. Further clarification of areas of operation are stated in response to your questions #6 and #8.

3. Are you aware of anyone who might be opposed to H.R. 4820?

Because of the unique nature of the ALBERT and the limited number of passengers she is fitted to carry, there should be no substantive opposition on practical grounds. Given the history of the Jones Act and the American Maritime Trades, there may be some expression of concern that the ALBERT poses a threat to the trades. However, since she is not fitted for cargo, will not engage in any scheduled passenger service, and is designed to carry fewer than 18 passengers on custom charters, such expressions of concern should be readily satisfied in that the ALBERT will not be engaging in any of the traditional pursuits of maritime activities. Furthermore, because of her size, she will not even compete with the smaller charter vessels such as "six pack" fishing charters, "head boats", or similar activities.

4. Have you ever consulted with the Coast Guard as to whether the ALBERT can carry passengers as intended?

Based on the fact that the ALBERT was in United States service as a research vessel that carried up to 18 scientists and crew and was documented by the U.S. Coast Guard as "Miscellaneous (research)", South Seas Charter Service was confident at the time of purchase that the ALBERT could either meet the requirements for inspection for passenger service or be easily brought into compliance with those requirements.

In requesting the passage of H.R. 4820, South Seas Charter Service finds itself in a "catch 22" situation regarding Coast Guard inspection. It is their understanding that they can not get the vessel inspected unless they obtain coastwise status while at the same time are concerned that they can not obtain coastwise status unless they get the vessel inspected.

Furthermore, the expense of hauling, surveying, and inspecting the vessel is a matter of negotiation between South Seas Charter Service and prospective buyers and to do so with no contractual sales commitment would place additional financial burdens on South Seas Charter Service. Further comment and clarification is in the response to question #7.

5. How would you respond to the statement that, by waiving the cabotage laws for this vessel, we are doing a disservice to those passenger vessel operators who have always operated within the requirements of our cabotage laws?

Much of my response to the preceding question may be found in questions #2 and #3. However, the ALBERT's design limits her to a very unique service outside the parameters of normal passenger service and therefore does not do a disservice to other passenger vessel operators. Furthermore, with her limited passenger space she is not designed to engage in regularly scheduled passenger or ferry service, fisheries, the carrying of cargo, or any of the other traditional activities of U.S. bottoms.

In as much as she is not competitive with any significant number of other vessels, the question of fairness having been raised warrants additional response. As I had indicated in both written and oral testimony, South Seas Charter Service purchased the ALBERT on the basis of the fact that she had current documentation as a research vessel at the time of purchase. At the same time, the ALBERT held current Lloyd's Registry Certificates in lay up for both machinery and hull. Based on those facts, their intent was to refit her and provide charter services for oceanographic research groups.

When they sought to document their ownership of the ALBERT they were advised by a private documentation service that miscellaneous research status was no longer granted to vessels, the nomenclature was no longer in use. As a result, having purchased a vessel in good faith and in the normal course of their business operations, they belatedly discovered that due to action taken by a governmental agency, they were now unwittingly faced with substantial economic hardship in that the vessel had lost status that had it not been taken away by government action would have allowed them to sell the vessel in a reasonable period of time.

Because of the loss of her original documentation, their efforts to attract a buyer for the ALBERT have been difficult, prolonged, and unsuccessful. In short, due to the actions of the government, unknown to them at the time, they are faced with an economic hardship. H.R. 4820 seeks to redress that hardship without imposing any disservice on either the government or its citizens.

6. The Coast Guard advises that the ALBERT will be used to carry passengers between Los Angeles, California and Mexico. Is this accurate; if yes, why do you need a coastwise exemption?

At the time my testimony was presented in writing on June 14 and orally on June 16, South Seas Charter Service was in preliminary negotiation with prospective buyers on the west coast. However, at that time we were unaware of any specific area in which the buyers intended to operate. As of this response, South Seas Charter Service advises me that no contractual obligation has been made.

All prospective buyers have been or will be made aware of the current status of the ALBERT. Whatever their intended area of operation might be, they either have been or will be informed of the fact that she will have to meet all U.S. requirements pertaining to the carrying of passengers. In the event that a west coast buyer consumates the purchase, it is most likely that limited service involving Mexico might be included in an itinerary. However, the ALBERT is designed for custom charters and itineraries would be subject to U.S. regulations and the wishes of the charter party, whether for diving charters, cruises, or other such activities.

In direct response, a coastwise exemption is necessary regardless of who buys the ALBERT in that the majority of her service would constitute travel within the general vicinity of her home port including movement among domestic U.S. ports in the general vicinity.

7. Since the vessel is over 100 gross tons, it must comply with the large passenger vessel requirements and the international treaty requirements of SOLAS. What have you done to assure compliance with all the safety requirements? Have you consulted with the Coast Guard? Has the Coast Guard ever examined your vessel to see what needs to be done?

With regards to meeting the necessary large passenger requirements, SOLAS, and consultation and examination by the Coast Guard, I would respectfully refer you to my response in question #4. Whether South Seas Charter Service charters the ALBERT in order to recover some of their investment while seeking a buyer, or a new owner purchases the ALBERT and seeks to engage in coastwise trade, either party or parties will undoubtedly be concerned about committing to the expense of inspection and survey unless they are confident that they can obtain coastwise status.

However, should the ALBERT be granted coastwise status, any owner would then have to comply with inspection standards, and all other requirements of the act, as well with any international agreements under SOLAS if foriegn ports are a consideration.

It should be noted that given the ALBERT's history as a vessel engaged in ice duty in the North Atlantic, having held Lloyd's Machinery and Hull Certificates, and having operated under the U.S. flag and U.S. Coast Guard documentation, that once coastwise status is granted, the vessel could then be readily brought into compliance with all of the other requirements of the act as well as those under international treaty with SOLAS.

8. Could you respond to the assertion that the owners want marketable title just so the vessel can be sold to interests in Hawaii?

The preceding assertion is inaccurate in that the owners, who have been engaged in the business of refitting and selling yachts for some twenty five years with more than twelve vessels, certainly would not restrict themselves to such limitations. They are not "seeking a marketable title just so the vessel can be sold to interests in Hawaii", but are in fact seeking relief from a hardship inadvertently imposed on them by government action when the ALBERT's original status as a research vessel was terminated without their knowledge.

9. There appears to be no extenuating circumstances warranting special legislation, since the owners were always aware that the ALBERT did not qualify for the coastwise trade because she was foreign-built. Would you care to comment on these observations?

I would simply reiterate my earlier comments and refer to both my written and oral testimony. The extenuating circumstance are that the owners face a financial hardship imposed by government action that occured without their knowledge of that action at the time of their purchasing the vessel in good faith.

To state that "they were always aware that the ALBERT did not quality for the coastwise trade because she was foriegn built" is insufficiently accurate and requires clarification. In fact, while they were aware that as a foriegn bottom the ALBERT would not normally qualify for coastwise trade, they were aware that the status as a research vessel would permit the to engage in charter service for oceanographic research since she was already documented for that purpose by the U.S. Coast Guard. They were only made aware of the fact that the vessel could not be used for its intended purpose following the purchase.

Even then, on being informed of the loss of research status, based on their experience with the yacht PURITAN, an American built vessel which had lost coastwise status by having been under foriegn ownership prior to returning to U.S. ownership, they assumed that their problem with the ALBERT could be resolved through the same routine administrative procedures by which they had resolved the PURITAN situation.

They were naively unaware that the minute but important difference between the PURITAN and the ALBERT lay in the fact the the PURITAN was able to have it coastwise status reinstated because it had been built in an American yard prior to the passage of amendments that denied reinstatement of coastwise status. (The details concerning their experience with the PURITAN appear in both my written and oral testimony.)

When South Seas Charter Service was made aware of the the intricate differences between the two vessels legal status, they then had no choice but to seek relief as provided in the law so that they may continue to operate their business in the same fashion as they have for some years.

10. Besides purchasing older vessels, refurbishing, and 'reselling them, could you provide us with other examples of the types of business South Seas Charter Service engages in?

South Seas Charter Service primary business is the refurbishing and reselling of vessels. A husband and wife partnership, they derive some limited income from writing articles for various national and international maritime magazines, from providing consulting services in their area of expertise, and from chartering the refurbished vessels prior to sale. Unfortunately for them, the inability to obtain coastwise status for the ALBERT has greatly limited this source of income since the purchase in 1985.

Furthermore, given the fact that it is essentially a two person company, they are limited to refurbishing one vessel at a time. In past years the chartering of a refurbished vessel prior to sale enabled them to derive operating revenues pending final sale. The final sale then provided them with sufficient revenues to invest in another vessel to continue the business. Because the process of refurbishing such vessels often takes several years, they have periods of limited income supported by sales from prior years and augmented by charter work. Therefore the ability to charter a vessel pending sale is crucial to their ability to remain in business.

STATEMENT FOR THE RECORD OF THE HONORABLE JOHN GAUGHAN, MARITIME ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE OF THE HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE ON H.R. 2024, H.R. 4460, H.R. 4490, H.R. 4624, H.R. 4625, H.R. 4627, AND H.R. 4716, BILLS PERTAINING TO THE DOCUMENTATION OF CERTAIN VESSELS FOR OPERATION IN THE U.S. COASTWISE TRADES OR THE FISHERIES OF THE UNITED STATES.

June 16, 1988

Mr. Chairman and Members of the Subcommittee on Merchant Marine. My name is John Gaughan and I am the Maritime Administrator of the Department of Transportation. I appreciate the opportunity to submit a statement for the record presenting the views of the Administration on the seven bills before the Subcommittee this morning.

Mr. Chairman, as you know, the provisions of law in 46 App. U.S.C. 289, 883, and collateral statutes (Jones Act), generally restrict the coastwise for hire transportation of passengers and cargo to certain qualified U.S.-flag vessels.

One Jones Act requirement is that such vessels must be constructed in the United States. Four of these bills would grant Jones Act privileges to the named vessels that were not constructed in the United States. These are:

a. H.R. 4490, concerning the FAIR TIDE (Official No. 644363), a 43.6 foot yacht of 16 gross tons that was constructed in Taiwan in 1981.

b. H.R. 4624, concerning the FREEDOM (Official No. 569163), a 49.8 foot wooden schooner of 35 gross tons that was constructed in Canada in 1969.

c. H.R. 4627, concerning the PILGRIM (No Official No.), a 96 foot replica of an historic sailing vessel of approximately 99 gross tons, that was constructed in Portugal in 1945.
d. H.R. 4716, concerning the ENCORE (Official No. 545162), a 63 foot pleasure vessel of 65 gross tons that was constructed in Japan in 1971.

Mr. Chairman, the Administration believes that the Jones Act should be maintained in its present form. With respect to these four vessels, we are unaware of any compelling reason for an exception to the Jones Act. Nonetheless, in view of the de minimis impact of this proposed legislation on the U.S. maritime industry, we do not object if the Congress is convincingly persuaded about the enactment of H.R. 4490, H.R. 4624, H.R. 4627, and H.R. 4716.

Mr. Chairman, another Jones Act requirement is that if a coastwise qualified vessel is sold or transferred to foreign registry it shall not thereafter acquire the right to engage in that Jones Act trade. One of the bills, H.R. 2024, would grant such Jones Act privileges to the GILBERT (Official No. 230568), a 54.7 foot tugboat of 38 gross tons that was constructed in Baltimore, Maryland in 1931, sold foreign in 1975, and currently operated under the U.S.-flag.

The Administration is opposed to H.R. 2024. At the present time we are unaware that there is a shortage of qualified U.S. tow boats, and notwithstanding the age of the tug, we believe that this bill represents an unacceptable precedent.

Mr. Chairman, another bill before the Subcommittee this morning is H.R. 4625, a bill "To issue a fisheries license for the operation of the vessel MV OCEAN CYCLONE." The MV OCEAN CYCLONE (Official No. 248959) is a 359.5 foot motor vessel of 5,506 gross tons that was originally constructed as a KNOT Class vessel at Superior, Wisconsin in 1945. It was sold out of the National Defense Reserve Fleet (NDRF) in June, 1965, at which time it became contractually prohibited, under Sections 508 and 510(g) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1158 & 1160(g)), from being used or operated as a means of transporting passengers or cargo for hire. In 1975 the vessel was transferred to foreign registry. Legislation is required to overcome the restrictions placed on the vessel when it was sold from the NDRF and then subsequently sold foreign.

Ordinarily, we do not favor waiving such employment restrictions, since vessels sold from the NDRF were never intended to compete with private commercial vessels. However, P.L, 96-260 did provide a two year period (June 4, 1980 - June 3, 1982) during which obsolete vessels previously sold from the reserve fleet were authorized to be converted in the United States and subsequently operated in the U.S. fisheries in order to increase U.S. presence in offshore commercial fish processing and delivery.

This Department has obtained title to a number of vessels designed for offshore oil service, as a result of foreclosures on federally guaranteed debt. Several of these have been successfully converted to commercial fishery service following resale. Another vessel of this type recently had its design altered during U.S. construction so as to make it a catcher/processor vessel for production of surimi. While it is possible that the proposed employment for the MV OCEAN CYCLONE is such that conversion of one of these newer, fully coastwise-qualified vessels could not provide a satisfactory solution, we believe that such an alternative deserves fuller exploration.

Accordingly, the Department is not presently prepared to support H.R. 4625. Should adequate assurances concerning the unsuitability of existing U.S. tonnage be forthcoming, we would be prepared to reconsider this position.

H.R. 4460 would amend the first proviso of Section 27 of the Merchant Marine Act of 1920 (46 App. U.S.C. 883) by establishing a "floor" of 100 gross tons for applicability of the proviso. The effect would be to re-qualify for coastwise trading privileges any vessel of less than 100 gross tons which had once enjoyed such privileges and had subsequently undergone a period of foreign ownership or registry.

The Department of Transportation is opposed to enactment of H.R. 4460. While the measure appears to have the legitimate intent of reducing the legislative and administrative burden presently posed by the need to introduce, consider, and vote upon private legislation benefitting individual vessels, it is this very process that affords protection to those vessel owners who have maintained continuous U.S. documentation. The public forum provided by the current process ensures that executive agencies will have an opportunity to assess the individual and collective impacts of the proposed redocumentations on the existing U.S. fleet, and that individuals who might be adversely affected will have an opportunity to be heard before action is taken.

We appreciate that foreign-built vessels would not be covered by the bill. Nonetheless, there may still be a substantial body of vessels which would be eligible for redocumentation under this legislation.

We sympathize with the desire of the Congress to have a better mechanism for addressing constituent requests for documentation relief for smaller vessels. However, while the present mechanism may appear cumbersome, we believe that it provides important procedural safeguards to the owners of existing coastwise-qualified U.S. vessels, and that those safeguards contribute tangibly to the maintenance of efficient, safe, and modern domestic merchant and recreational charter fleets.

The American Waterways Operators

Executive Offices

1600 Wilson Boulevard
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Arlington, VA 22209

Tel. 703 841-9300

June 20, 1988

The Honorable Walter B. Jones
Chairman
Subcommittee on Merchant Marine
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The American Waterways Operators, the national trade association representing the U.S. inland and coastal tug and barge industry, submit our comments on H.R. 4460 and H.R. 2024, legislation to, respectively, waive restrictions on the documentation of vessels of 100 gross tons and below which have been sold to foreign companies, and to allow the Secretary of Transportation to issue a certificate of documentation for the tug GILBERT.

Mr. Chairman, we understand that H.R. 4460 was intended to streamline the current procedure which requires a case-by-case review of each request for U.S. documentation where chain of title to a small vessel has been broken. Approval has become, in many instances, routine. We do not believe, however, that H.R. 4460 would protect the U.S. fleet from unfair competition and therefore oppose the legislation.

Many towing vessels in the coastwise trade, under the current measurement system, measure 99 gross tons. Under H.R. 4460, comparable vessels which may have been sold foreign at a bargain price would be routinely permitted to enter the coastwise trade, without the opportunity for public review. Such vessels would thus be permitted to operate in direct competition with U.S. vessels. There is an additional question of vessel safety; there is no assurance that U.S. safety standards have been maintained when a vessel has been under foreign ownership. AWO members build and operate vessels based upon the same set of rules. We believe that H.R. 4460 could easily disrupt this level playing field and inadvertently allow a competitor an advantage. We oppose H.R. 4460 for this reason.

Mr. Chairman, if you and your colleagues determine the need to pursue this initiative, AWO believes language that restricts the type of employment in which such vessels could engage might be worthy of your consideration.

The subcommittee also has under consideration H.R. 2024, which would give documentation privileges to the tug GILBERT. The GILBERT is now owned by a U.S. firm, Canaveral Seafoods Co., Inc. Previously it had been sold to a foreign corporation.

It appears that the GILBERT was never granted permission to operate the tug, which measures under 100 gross tons. Although the economic condition of the domestic towing industry has somewhat improved since the depression of the early-to-mid 1980s, all vessel operating companies continue to face daily challenges to reaching and maintaining financial viability. We believe that allowing the GILBERT to be documented for use in the U.S. coastwise trade is not in the best interests of the industry and should be denied.

Mr. Chairman, we appreciate the opportunity to submit our comments to you and are happy to assist you and your staff in any way.

Sincerely,

Dena Wilson

Dena L. Wilson
Vice President-Legislative Affairs

cc: Members, Subcommittee on Merchant Marine

Shipbuilders Council of America
1110 Vermont Avenue, N.W.
Washington, D.C. 20005-3553
202-775-9060

RECEIVED
JUN 20 198
COMMITTEE ON MERCHANT MARINE AND FISHERIES

June 16, 1988

Dear Mr. Chairman:

The Shipbuilders Council of America, the national trade organization representing principal domestic shipbuilders, ship repairers, and the vendors of equipment and services to those industries, submits this letter in opposition to H.R. 2024 and H.R. 4460, bills which affect vessels engaged in the coastwise trade. A list of Council membership is enclosed.

As a matter of policy, the Shipbuilders Council does not usually object to legislation that allows small, U.S.-built vessels which have been sold abroad and documented under foreign registry from being readmitted into the coastwise trade. In the absence of such remedial measures, such activities would run afoul of the "sold foreign" proviso to the Jones Act (46 USC 883). The first proviso of section 27 of the Merchant Marine Act of 1920 declares:

> "Provided, that no vessel having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade."

The reason why the Shipbuilders Council does not object to such remedial legislation is that the facts of the typical case are in favor of the owner of the vessel. As a practical matter, the vessel is a small pleasure yacht or fishing boat, usually originally constructed in the United States, and the new owner is an unsophisticated individual who had no knowledge of the "sold foreign" proviso at the time he or she purchased the vessel in question. In other words, simple equity is clearly on the side of the owner in such a case.

H.R. 2024 would authorize the Secretary of Transportation to issue a certificate of documentation for the vessel GILBERT. This action on the part of the department (actually the Coast Guard) would permit the tug to engage in the coastwise trade. The facts behind the acquisition of the GILBERT are spelled out in detail in the statement on the bill submitted by Crowley Maritime Corporation, and need not be recited here. A review of that statement discloses that Canaveral Seafoods, Inc., the owner of the GILBERT, is not the typical innocent and naive small vessel operator who is the subject of remedial legislation. The firm is an experienced operator. In addition, it appears that the buyer purchased the tug at a bargain price, and the vessel could have an economic advantage over other tugs engaged in the coastwise trade. For these reasons, the Shipbuilders Council does not believe a legislated exception to the proviso is justified and opposes the enactment of H.R. 2024.

H.R. 4460 would amend the first proviso of section 27 by making the prohibition contained therein only applicable to vessels of 100 gross tons or more. Phrased differently, vessels of less than 100 gross tons could be automatically readmitted to the coastwise trade. On its face, the bill appears to be a housekeeping measure designed to reduce the administrative costs of the Executive and Legislative branches. In that respect, the sponsors of the measure should be commended and the bill supported. However, the Shipbuilders Council has a problem with the tonnage threshold. The figure of 100 gross tons is too high because it is not uncommon for vessels to be specifically designed to be slightly less than 100 gross tons. A number of the members of the Council could be deprived of business opportunities because of this fact. Accordingly, the Council opposes H.R. 4460.

The Shipbuilders Council requests that this letter be made a part of the record or H.R. 2024 and H.R. 4460.

Sincerely,

John J. Stocker
John J. Stocker
President

The Honorable Walter B. Jones
Chairman
Committee on Merchant
Marine & Fisheries
1334 Longworth House Office Building
Washington, DC 20515

~~Enclosure~~ w/d

DYER, ELLIS, JOSEPH & MILLS

MEMORANDUM

Re: Legislative history of the "sold foreign" proviso to the Jones Act
Dt: February 1, 1988

This memorandum discusses the legislative history and judicial construction of the "sold foreign" proviso to the Jones Act, 46 U.S.C. App. § 883, as it applies to the readmission of formerly foreign-owned tug GILBERT into the coastwise trade.

Section 883 of 46 U.S.C. App. provides in pertinent part:

> Provided, That no vessel having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade.

On its face, this language prevents readmission of now-foreign vessels into the coastwise trade.

In 1935, Congress amended section 27 of the Merchant Marine Act of 1920 to prevent "sold foreign" vessels from regaining coastwise status. See H.R. 115, Pub. L. No. 74-191, 49 Stat. 442 (codified at 46 U.S.C. App. § 883). The vessels which concerned Congress were built during World War I, when the American shipping and shipbuilding industry enjoyed prosperity, but were "sold foreign" at low prices immediately after the war when the industry declined. During the 1920s and early 1930s, economic conditions changed again and owners of many of the "sold foreign" vessels successfully "renaturalized" their vessels and entered the coastwise trade. See generally "Readmittance of Vessels to the Coastwise Trade of the United States," H.R. Rep. No. 118, 74th Cong., 1st Sess. 3 (1935); (same title) S. Rep. No. 870, 74th Cong., 1st Sess. 3 (1935).

Apparently responding to demands by coastwise operators, shipbuilders, and labor unions to halt these reentries into the coastwise trade, Congress enacted the "sold foreign" proviso. According to the identical House and Senate committee reports, the proviso affected two classes of vessels:

> 1. Vessels built in or documented under the laws of the United States and later sold to foreign owners.
> 2. Vessels built in the United States for foreign countries or foreign purchasers.

Id. at 2. The committee reports stated:

> **These old vessels have only a nuisance value, but may be repurchased for something more than junk value. They are of very little value except to cut into existing trade, demoralize established services, produce instability and disorder, and delay the building of ships in American yards where the employment would go to American labor.**

Id. at 3. The committee reports further noted that many of the "sold foreign" vessels had been repaired abroad, that the interests of the American merchant marine would be better served by the construction new, modern vessels, and that the existing coastwise trade was operating at below capacity. *See also* __ Cong. Rec. 5390 (April 10, 1935) (Rep. Bland); _ Cong. Rec. 10049-50 (June 25, 1935) (Sen. Vandenberg). Although the legislative history shows that Congress was concerned primarily with conditions as they existed in the 1930s, the language of the proviso contains no time limitations.

In *Marine Carriers Corp. v. Fowler*[1], the Court of Appeals for the Second Circuit, in discussing the legislative history of the "sold foreign" proviso, noted that the coastwise laws aim to "protect the American shipping industry already engaged in the coastwise trade, to provide work for American shipyards, and to improve and enhance the American Merchant Marine." 429 F.2d 702, 708 (2d Cir. 1970) (Kaufman, J.), *cert. denied*, 400 U.S. 1020 (1971). *See also Manhattan Tankers, Inc. v. Dole*, 787 F.2d 667, 670 n.3 (D.C. Cir. 1986) (quoting *Marine Carriers Corp.*); *Gillentine v. McKeand*, 426 F.2d 717, 720-21 (1st Cir. 1970) (purpose of "sold foreign" proviso was to protect American vessels engaged in the coastwise trade). Moreover, despite the apparent congressional focus on vessels built during World War I, the proviso applies to vessels constructed relatively recently as well as those constructed during World War I. *See Marine Carriers Corp*, 429 F.2d at 707 n.4.

The "sold foreign" proviso is no secret to those in the maritime industry. It should be expected that the new owners of the GILBERT would examine the chain of title, and discover that the vessel had been "sold foreign," and thus was ineligible to participate in the coastwise trade. It is likely that the purchase price of the tug would have been discounted to reflect the "sold foreign" status. Thus, with an obligation by the new owners to examine the chain of title and a purchase price reflecting ineligibility to operate in the coastwise trades, the new owners have no equitable claim for a special statutory exemption from the Jones Act. If the new owners were unaware of the proviso and paid full price for the tug, their remedy is a legal action against the sellers of the tug for some sort of failure to disclose or breach of warranty,[2] not a legislative effort seeking an exemption from the proviso.

In conclusion, the readmission of the tug GILBERT into the coastwise trade by statutory exemption would be inconsistent with the legislative history of the "sold foreign" proviso to the Jones Act, 46 U.S.C. App. § 883, which, as confirmed by subsequent case law, demonstrates that Congress enacted the proviso to protect existing domestic operators, shipbuilders, and labor unions both in 1935 and in the future.

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[1] As discussed above, the "sold foreign" proviso affects two classes of vessels: (1) vessels built domestically for domestic purchasers and then sold foreign, and (2) vessels built domestically for foreign purchasers. *Marine Carriers Corp.* involved the second class of vessels, but its discussion applies analogously to the first class of vessels.

[2] *See, e.g.*, *Gillentine*, 426 F.2d at 721-22 (seller's warranty against encumbrances could include promise that vessel not subject to "sold foreign" proviso).

ALL ALASKAN SEAFOODS, INC.
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TELEX 321257 • (206) [illegible] • FAX 1-206-[illegible]-2313

June 15, 1988

The Honorable Don Young
Room 2331
Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Young:

Our company has acquired the vessel OCEAN TEMPEST and is in the process of converting it to a fish processing vessel. We have requested consideration of certain special legislation to lift restrictions on use placed by MARAD.

The OCEAN TEMPEST was built in 1945 at Savannah, Georgia for MARAD as part of the World War II effort. She was built as a knot ship (C1-M-AV1) and named "The Horseshoe Splice." This vessel remained with MARAD after WW II and was placed in the Mobile, Alabama Reserve Fleet. In 1972, she was sold to the Nicolai Joffe Corporation to be scrapped within two years. However, in 1974 she was resold to the Storm Drilling Company of Texas to be used in the oil exploration industry. MARAD placed a restriction on her use that she would not be used for transportation of passengers or cargo. After purchase by Storm Drilling, the vessel's name was changed to OCEAN TEMPEST.

From 1974 until 1987, the OCEAN TEMPEST was used as a drilling boat in the oil exploration industry. On August 20, 1987, the OCEAN TEMPEST was sold by Odeco Drilling, Inc. (successor to Storm Drilling) to All Alaskan Seafoods, Inc. All Alaskan Seafoods, Inc. is a corporation licensed by the State of Alaska and is engaged in the seafood industry in the North Pacific, Bering Sea and coastal waters. The OCEAN TEMPEST has been acquired as a replacement vessel to the M/V ALL ALASKAN which was lost due to a grounding accident in March 1987.

the M/V ALL ALASKAN was also a C1-M-AV1 which had earlier been acquired from MARAD and converted into a fish processor. The ALL ALASKAN operated successfully in the seafood industry for 12 years as a major buyer of fish from Alaska fishermen.

It is anticipated that the OCEAN TEMPEST will be ready for operation in the summer of 1988. Her function will be virtually identical to that of the ALL ALASKAN, except that she will be modernized with the latest and most efficient processing and refrigeration equipment. The OCEAN TEMPEST will employ approximately 240 personnel aboard the vessel plus shoreside support personnel and is expected to generate approximately $35 million in gross revenue annually. It is also expected that she will purchase $18 million worth of fish per year from Alaska fishermen. These products include king crab, tanner crab, bottom fish and salmon.

Very truly yours,

ALL ALASKAN SEAFOODS, INC.

Lloyd Cannon
Lloyd Cannon
President

record
(Ocean Cyclone)
HR4625

AMERICAN HIGH SEAS FISHERIES ASSOCIATION

TESTIMONY

of

PETE GRANGER
Executive Director
AMERICAN HIGH SEAS FISHERIES ASSOCIATION

on

H.R. 4625

Mr. Chairman and Members of the House Merchant Marine and Fisheries Committee,

The American High Seas Fisheries Association (AHSFA) was formed in early 1987 by owners and operators of U.S. fishing vessels who participated in joint venture activities with foreign fish processors in the North Pacific Ocean and Bering Sea. The purposes of AHSFA, which currently has 28 member vessels, include the promotion of:

1. Full Americanization of the U.S. bottomfish resources off Alaska;

2. Sound conservation and management of the resource within the U.S. EEZ; and

3. Preservation of the American fisherman's freedom to sell his catch, at sea or ashore, wherever he expects the best return.

Our member vessels are U.S. built, owned and manned and are part of the most up-to-date and efficient commercial fishing fleet in the world today. Each vessel represents a capital investment of between $1.5 million and $3 million.

In 1987, over 120 of these U.S. vessels participated in Joint Venture operations in the North Pacific and the amount of fish purchased reached the 1.3 million metric ton level.

However, under the Processor Preference Amendment to the FCMA (Magnuson Act), JV operations are assigned a lower priority than "DAP" fisheries (fish harvested by U.S. vessels and processed by U.S. processors). Under this priority system, JV fishermen this year are seeing significant reductions in their over-the-side markets as DAP fisheries expand. The chief problem is that the rapidly expanding DAP sector is dominated by catcher-processor vessels which do not need to purchase their product from existing U.S. harvesters. Shore-based alternatives do not appear to be forthcoming.

This presents a situation that is of grave concern to this Association: the loss of the JV fisheries which our members pioneered and which was the genesis of the groundfish industry in the Bering Sea and Gulf of Alaska. The only other viable alternative is the development of U.S. at-sea processors capable of accepting our vessels' catch in the same fashion the foreigners are now doing.

H.R. 4625 is an important step in assuring alternative markets for U.S. harvesters. This Association strongly supports this bill and urges you to pass it with all expediency. It will assure employment of several JV vessels including members of AHSFA. We commend Mr. Charles Yates for undertaking this project and hope it serves to encourage other U.S. "mothership" projects to be undertaken.

Thank you very much for the opportunity to provide testimony on this important matter.

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OFFSHORE MARINE SERVICE ASSOCIATION
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OMSA

June 14, 1988

The Honorable Mario Biaggi
Member, Subcommittee on Merchant Marine
HOB, Annex 2, Room H2-531
2nd and D Streets, S.W.
Washington, D.C. 20515-6233

Dear Mr. Biaggi:

The Offshore Marine Service Association which represents the interests and concerns of owners and operators of American Flag vessels engaged in providing services to the offshore oil industry, will be unable to attend the Subcommittee hearings on H.R. 4460 scheduled for Thursday, June 16th.

It is respectfully requested that our comments on H.R. 4460, a bill designed to remove unnecessary restrictions on the documentation of certain vessels, be entered into the record of that scheduled hearing.

The Association and its members must respectfully oppose the concept being advanced by this unnecessary and an unwanted amendment to 46App. U.S.C. 883.

Our American owners are and always will be, strong proponents of the so called Jones Act. This bill, offered for no disclosed reason would only further erode the protection afforded the American Coastwise Trade.

Owners and future purchasers of American built vessels that have been re-flagged foreign are all aware that once they are placed under foreign flag the vessel loses its Coastwise privilege forever.

The Association is aware the Congress has straddled themselves with the review of special bills that seek to restore Coastwise privilege to former American vessels now flagged foreign. Although the Association would hesitate to endorse this almost constant examination by the Congress, petitions that have special merit should be reviewed on a case by case basis.

H.R. 4460 however will provide a Carte Blanche to any former American vessels under 100 gross registered tons. The Association believes there could be an extraordinary amount of this sized vessel. With little analysis, the Association identified over seventy (70) such vessels in our industry alone that could be returned to enter an already saturated market.

The issue is further complicated as to whose 100 GRT is being applied. Former American Rules, present domestic tonnage standards, the International Tonnage Convention 1969, or those imposed by the foreign administration. Tonnage measurement is a fragile art, repairs and modification to the vessel may unintentionally and easily alter the tonnage and go undetected by foreign administrations.

We see the potential for great harm to American Shipbuilders and repairers for, if passed, vessels could be conveniently be flagged foreign for cheaper repair and returned to the Coastwise trade with little penalty.

The Offshore Marine Service Association is joined by the National Party Boat Owners Alliance, Groton, Connecticut in opposition to this amendment to section 27 of the Merchant Marine Act, 1920.

Very truly yours,

Offshore Marine Service Assn.

Capt. W. A. Mayberry
President

National Party Boat Owners Alliance, Inc.

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June 14,1988

Congressman Mario Biaggi
Subcommittee on Coast Guard & Navigation
Room 1334
Longworth House Office Bldg
Washington, DC 20515-6230

Dear Congressman Biaggi:

It has come to my attention that HR 4460 is being brought before the committee on June 15th. It is my understanding that this bill proposes to return to American registry oil patch "T" boats that had been under foreign registry. We are opposed to this move for a variety of reasons.

1. Just because it suited the convenience and pocketbooks of companies to place these vessels under foreign flags beneficial to them, there is no reason to grant them return status now that the foreign charters for those vessels is drying up. Let them sell the boats foreign.

2. Too many crew boats of American registry have already flooded the market with bad results. In the first place, vessels that were designed for our segment of the maritime industry, party fishing boats in particular, are going begging on the used boat market because these crew boats that were never meant for this trade can be had for 10¢ on the dollar.

Crew boats were designed to go fast--and never mind the bumps. Crews being transported to oil rigs have special seating below decks in chairs that are thickly * cushioned to absorb the shock and which are equipped with seat belts to keep the occupants from being catapulted out. Now, many of these boats have been recycled into our industry with redesigned deck layouts and have found their way into the waters of the Northeast. Passengers are on the main deck, free to walk around when these boats are underway. Unfortunately, there have been severe injuries when these vessels fall off waves--broken arms, legs, etc. It is one of the factors that has boosted P & I insurance rates for everybody in this field. We don't need more of this junk available.

Sincerely yours,

George F. Glas

Capt. George F. Glas,
Executive Director

*below decks in chairs that are thickly